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Right to adequate housing

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context, Ms. Raquel Rolnik, submitted in accordance with Human Rights Council resolution 15/8, paragraph 2 (h).

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Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living

Summary

The present report focuses on the realization of the right to adequate housing in post-disaster settings. The report assesses human rights standards and guidelines relevant to an approach to disaster response based on the right to adequate housing and discusses some existing limitations. It elaborates upon key challenges relating to the protection and realization of the right in disaster response: inattention to or discrimination against vulnerable and disadvantaged groups; the overemphasis on individual property ownership and the associated difficulty to recognize and address the multiplicity of tenure forms equally in restitution and recovery programmes; the risks of approaching post-disaster reconstruction predominantly as a business or development opportunity that benefits only a few; and limitations in existing frameworks for reconstruction and recovery. The report concludes by outlining the fundamentals of an approach to disaster response that deliberately and comprehensively integrates the right to adequate housing.

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I. Introduction

1. The present report focuses on the realization of the right to adequate housing in post-disaster settings. It should be read in conjunction with the report submitted to the Human Rights Council (A/HRC/16/42), in which the Special Rapporteur discusses common issues relevant to both post-conflict and post-disaster settings.

2. While many commonalities exist across post-conflict and post-disaster situations, some challenges are specific to the latter and require different responses. The Special Rapporteur chose to focus on disasters, in the light of the increasing prevalence of disasters worldwide that have more devastating effects than ever before,[1] the likelihood that this trend will continue as a result of climate change, rapid urbanization and population growth, and the comparatively fewer experiences and guidelines available to address issues related to the right to adequate housing in the wake of disasters, compared to post-conflict settings.[2] The Special Rapporteur also had the opportunity to conduct a working visit to Haiti (8-11 June 2011) to assess reconstruction and relief efforts in the wake of the earthquake of January 2010, which greatly informed her thinking for the present report and highlighted the need to focus on disasters.[3]

3. Taking an approach to post-disaster and recovery-based reconstruction on the right to adequate housing has significant implications. The Special Rapporteur is concerned that disaster relief and recovery efforts have so far, with notable exceptions, taken a narrow view of what constitutes the right to adequate housing, on some occasions leading to violations of the right. Section I of the present report assesses relevant standards. Sections II to V elaborate upon key challenges. The report concludes by outlining the fundamentals of an approach to disaster response that deliberately and comprehensively integrates the right to adequate housing and provides recommendations for follow-up measures.

II. Assessment of the legal and policy framework applicable to natural disasters

4. While there are a number of standards and guidelines relevant to ensuring the right to adequate housing in post-disaster situations, they are often understood and applied in a fragmented manner.[4] There are other more specific limitations too, as will be discussed.

5. The right to adequate housing is most clearly recognized by the International Covenant on Economic, Social and Cultural Rights (article 11). The Committee on

[1] International Disaster Database, http://www.emdat.be.

[2] The present report will nonetheless draw from examples in post-conflict settings, when relevant and applicable to post-disaster situations, and in the absence of documented examples in disaster situations.

[3] The Special Rapporteur would like to reiterate her thanks to the United Nations Stabilization Mission in Haiti, the Office of the High Commissioner for Human Rights and the United Nations Human Settlements Programme, which facilitated her visit.

[4] Human rights challenges in conflict and post-conflict settings have received more attention and the relevant standards have been further elaborated upon than in post-disaster situations. In addition to the standards discussed here, post-conflict responses would also be guided by international humanitarian law, refugee law and standards pertaining to remedies and reparation.

Economic, Social and Cultural Rights underlined the importance of interpreting the right in broad terms, identifying seven aspects of the right that States must progressively realize: security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.[5] All the aspects and safeguards pertaining to eviction and resettlement derived from the right[6] are relevant to disaster response, as are the human rights principles of participation and non-discrimination and equality.[7]

6. However, existing guidance with respect to disaster situations has given little attention to the right to adequate housing. When reference to the right is made it is limited, with the right narrowed down to the need to provide shelter, housing or to aspects related to protection.[8] The few attempts to discuss the right in a more comprehensive manner have remained at the level of an individual organization's guidance and not in the form of authoritative policies of broad application.[9] Equally, United Nations human rights mechanisms have, with notable exceptions, not addressed the specificities of disaster situations and their impacts on the enjoyment of the right to adequate housing or other human rights, remaining at the level of generalities.[10]

7. Instead, most initiatives to address disasters from a human rights perspective have taken place with respect to specific groups, notably internally displaced persons and refugees. The Guiding Principles on Internal Displacement are essential in this regard. They have been recognized as a significant international framework for the protection of internally displaced persons in both post-conflict and post-disaster situations.[11] While attention was at first geared to the protection of internally displaced persons in conflict and post-conflict situations, in recent years policy and operational guidelines have also been developed with respect to natural disasters, expanding the scope of application to all persons affected by disasters, including but not limited to internally displaced persons. The Inter-Agency Standing Committee Operational Guidelines on the Protection of Persons in Situations of Natural Disasters (Inter-Agency Standing Committee Guidelines) is an important document in this regard.[12] The Guidelines and the above-mentioned Guiding Principles recognize the right of persons displaced by conflict or disaster to durable solutions, namely, a return to their homes or places of habitual residence (and, as

[5] See Committee on Economic, Social and Cultural Rights, General Comment No. 4, on the right to adequate housing.

[6] See Committee on Economic, Social and Cultural Rights, General Comment No. 7, on forced evictions; see also "Basic principles and guidelines on development-based eviction and displacement" (A/HRC/4/18, annex 1).

[7] Participation was discussed in the previous report to the Human Rights Council. Section III of the present report discusses non-discrimination.

[8] For example, in the Inter-Agency Standing Committee Operational Guidelines on the Protection of Persons in Situations of Natural Disaster, reference to adequate housing is made under C.2.1 but not in other potentially relevant provisions.

[9] See Erica Harper, *International Law and Standards Applicable in Natural Disaster Situations* (Rome, International Development Law Organization, 2009).

[10] The Representative of the Secretary-General on the human rights of internally displaced persons is among the exceptions. See observations by United Nations treaty bodies and special procedures, Universal Human Rights Index, http://www.universalhumanrightsindex.org/en/index.html.

[11] The legal database on the Guiding Principles attests to their wide recognition. See http://www.idpguidingprinciples.org/.

[12] First issued in 2006, a revised version was published in 2011.

key condition for durable return, to have housing or land restored to them), relocation elsewhere or local integration.[13]

8. The 2005 Principles on Housing and Property Restitution for Refugees and Displaced Persons[14] ("Pinheiro Principles") go one step further by recognizing a distinct "right to restitution" (covering housing, land and/or other property) for refugees and displaced persons.[15] An important question is whether the Pinheiro Principles apply to post-disaster situations. The intention seemed to have been that they should apply, the central idea behind principle 1.2 being that people who are displaced — regardless of the reason for their displacement — are similarly situated and have a right to return to their places of habitual residence and thereby to restitution. On that basis, some interpret the Principles as applicable to all situations of natural disaster.[16] However, others point out that the Principles are explicitly limited to the "arbitrary or unlawful deprivation" of people's former homes, land or places of habitual residence following displacement.[17]

9. This is not to say that the Pinheiro Principles are irrelevant to natural disaster situations. First, they fully apply in actual cases of arbitrary or unlawful deprivation or destruction of housing or land occurring in post-disaster situations, including, arguably, when displaced persons are denied their right to return to their homes (see section IV below), and in cases of unreasonable State failings with respect to disaster preparedness, mitigation or early warning systems.[18] Second, taken as a specification of existing standards pertaining to the rights of displaced persons and refugees to return to their homes, the Principles provide relevant guidance on how best to manage the technical and legal issues associated with housing, land and property restitution, guidance which has since been reflected to varying degrees in policy and practice.

10. Thus, an approach to disaster response that fully integrates the right to adequate housing would combine all the above sets of standards and principles and have at its core the various elements of the right to adequate housing. The recommendations in the final section of the present report propose the integration of those standards within a consolidated, conceptual and operational framework.

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[13] Guiding Principles on Internal Displacement, principle 28; Inter-Agency Standing Committee Guidelines, D.2.2, D.2.3.

[14] Sub-Commission on the Promotion and Protection of Human Rights, resolution 2005/21.

[15] Principle 2.2. See also the seemingly unsettled debate as to whether there is a self-standing right to property restitution under international law: Malcolm Langford and Khulekani Moyo, "Right, remedy or rhetoric? Land Restitution in International Law", *Nordic Journal of Human Rights*, vol. 28, No. 2 (2010). For the purposes of the present report, however, the Special Rapporteur is satisfied that the right to property restitution is an essential element of the right to remedy and reparation and to the right of refugees and internally displaced persons to return to their places of origin and habitual residence.

[16] Harper, *International Law*, chapter 4 (see footnote 9 above).

[17] Principle 1. See, among others, Charles Gould, "The Right to housing recovery after natural disasters", *Harvard Human Rights Journal*, vol. 22 (2009); Rebecca Barber, "Protecting the right to housing in the aftermath of natural disaster: standards in international human rights law", *International Journal of Refugee Law*, vol. 20, Issue 3 (2008).

[18] European Court of Human Rights, Budayeva and others v. Russia, 29 September 2008; Supreme Court of Pakistan, Floods Commission case, 7 June 2011, available from http://www.supremecourt.gov.pk/web/page.asp?id=735 (accessed 24 July 2011).

III. Discrimination and vulnerability: compounding factors in the impacts on and responses to disasters

11. Vulnerability is widely recognized as an important element in disaster risk reduction and management.[19] The most vulnerable, such as those living in poverty or with insecure tenure, are more likely to live in disaster-prone land; they are also at greater risks of displacement and loss of livelihood in the event of a disaster; and they will recover with more difficulty from the disaster.

12. On many occasions, vulnerability is compounded by direct or indirect discrimination, impacting on the ability of individuals and communities to protect themselves from disasters and to recover. The relevance of discrimination to disasters and disaster response may not be immediately apparent. Indeed, the term "natural disaster" could be taken as precluding responsibility, which may imply, in turn, the impossibility of discrimination. However, it is well accepted that the magnitude of impacts and distribution of losses from natural hazards are to a large extent man-made (see A/60/227). Disaster preparedness, mitigation and response are all subject to or conditioned by State action or omission, and may therefore be discriminatory.

13. The principles of equality and non-discrimination are firmly rooted in international human rights law. Attention to non-discrimination and equality requires Governments and aid organizations to pay particular attention to vulnerabilities and inequalities in pre-disaster contexts, and, in the aftermath of disasters, to address inequalities and protect the most vulnerable. United Nations treaty bodies have noted that even in times of severe resource constraints — as is typically the case in the wake of a disaster — States have a particular obligation to protect vulnerable members of society.[20] States should also take special measures to secure for disadvantaged groups the full and equal enjoyment of their human rights.[21] In post-disaster situations, such measures might translate into special assistance to support return of the most vulnerable groups or find land/housing for landless or homeless families.

A. Disadvantaged groups most affected by disasters

14. When Hurricane Katrina struck New Orleans in 2005, African Americans and poor people (with the two categories to a large extent blurred)[22] bore the brunt of the devastation because, for the most part, they lived most often in the lower-lying, more flood-prone sections of the city. In addition large numbers of the metropolitan area's population (being generally poor) lacked the means to escape the flood.[23] The

[19] See General Assembly resolution 64/200.

[20] Committee on Economic, Social and Cultural Rights, General Comment No. 3 on the nature of States parties obligations, article 2 (1) of the Covenant. See also concluding observations by the Committee on the Rights of the Child with respect to disasters, for instance, CRC/C/MOZ/CO/2, CRC/C/PHL/CO/3-4.

[21] International Convention on the Elimination of All Forms of Racial Discrimination, article 1 (4); Convention on the Elimination of All Forms of Discrimination against Women, article 4.

[22] No less than 84 per cent of the city's poor population was African-American. The Brookings Institution, "New Orleans after the storm: lessons from the past, a plan for the future" (2005), p. 6.

[23] Ibid., p. 13.

particular impacts and costs of the hurricane were therefore intimately linked to pre-existing social, economic and land use patterns, directly related to housing and urban planning policies.

15. In Honduras, in the wake of Hurricane Mitch in 1998, the groups disproportionately affected included poor women, peasants and indigenous groups, many of whom had been living under insecure tenure conditions and in vulnerable areas exposed to strong winds, flooding and landslides (see A/HRC/16/42, para. 32). In Colombia, the floods throughout 2010 and into 2011 were said to have disproportionately affected those already displaced by conflict, particularly indigenous and Afro-Colombians, who tended to live in remote areas subject to violence from armed groups.[24]

16. In the aftermath of the Pakistan floods of 2010, it was acknowledged that the poor and vulnerable bore the brunt of the catastrophe, having no assets or safety nets. Those who were displaced by the floods and lost their assets and means of livelihood consisted disproportionately of landless tenants and labourers, living in non-/semi-permanent housing.[25]

B. Neglect and discrimination made visible by disasters

17. The earthquake in Haiti exacerbated and made visible a hitherto relatively invisible problem, namely, the dire conditions characterizing informal settlements in which the majority of the Port-au-Prince population lived.[26] The settlements, as many others elsewhere, had been created spontaneously and had never been recognized formally by the authorities. They had no or little access to basic infrastructure and services. With the earthquake, many of the residents moved to camps, either because their homes or neighbourhoods had been destroyed or damaged, or in order to be able to receive food or medical assistance, to take part in cash-for-work programmes, to save on rent (in the case of renters) or in the hope of receiving a house.

18. Sixteen months after the earthquake, there were still 634,000 people in over 1,000 camps. Observers noted that the camp populations were declining more slowly than in 2010, suggesting that people had nowhere else to go or had decided that however precarious their situation in the camps, it was still better than their

[24] Elizabeth Ferris and Daniel Petz, *A Year of Living Dangerously: A Review of Natural Disasters in 2010* (London, The Brookings Institution – London School of Economics, 2011), p. 19. The Special Rapporteur welcomes information received from the Government of Colombia on the range of actions taken to address the effects of La Niña, such as the establishment of the "Fondo de Adaptación" charged to identify and manage projects aimed at finding durable solutions, including mitigation and preventing strategies.

[25] Government of Pakistan, Asian Development Bank and World Bank, *Pakistan Floods 2010: Preliminary Damage and Needs Assessment*, p. 68; Oxfam, *Land Rights and the Indus Flood, 2010-2011: Rapid Assessment and Policy Review* (Oxford, OxfamGB, 2011). The Special Rapporteur acknowledges the scale of the challenge faced by the Government and its efforts in handling relief and recovery, particularly the initiation of the Watan Card, which being non-discriminatory between landowners and the landless, encouraged all to return home.

[26] It is estimated that before the earthquake 80 per cent of the Port-au-Prince population lived in informal settlements, on only 20 per cent of the land.

situation of origin.[27] The earthquake thus highlighted long-entrenched patterns of discrimination and neglect. Disasters elsewhere have had similar effects.[28]

C. Recovery responses overlooking or discriminating against the most vulnerable

19. Recovery efforts, by overlooking or directly discriminating against some groups, can perpetuate and even reinforce pre-existing patterns of vulnerability and disadvantage. This is often the case with women. In the wake of the 2004 Indian Ocean tsunami, it was reported that the international response on many occasions strengthened "those who were better off and/or more articulate ... while marginalizing those who had few assets, notably women".[29] Relief efforts and policies, for instance, excluded women from livelihoods assistance and on occasion directly undermined women's pre-existing rights, such as their rights to housing or land in matrilineal communities.[30] When women also happen to have insecure tenure — as they often do because their access to housing and land frequently hinges on a relationship with a man, or because they face additional hurdles as sole head of a household, they are particularly vulnerable.[31]

20. Disaster response appears to differ greatly according to whether it addresses the situation of individual, formally registered, property owners or that of all those with other types of tenure arrangements. It has been noted that in most housing reconstruction programmes, tenure documentation and legal proof of rights are prerequisites for establishing beneficiary eligibility, with the consequence of excluding the poorest and most vulnerable, including those residing in informal settlements with temporary or informal rights of tenure.[32] In a number of countries, displaced renters and squatters often find themselves excluded from permanent housing schemes designed to replace the assets of homeowners.[33]

21. Similar limitations have been seen in post-disaster needs assessments. While conditions pertaining to tenure and land ownership may be discussed and recognized as important at the level of principle, they are not always addressed in policies, strategies and sectoral priorities in practice. For instance, in the disaster needs assessment carried out by international financial institutions and the Government of Pakistan following the floods, the proposed housing and reconstruction strategy

[27] International Organization for Migration, displacement tracking matrix, May 2011.

[28] Oxfam, *Land Rights and the Indus Flood*, p. 3 (see footnote 25 above).

[29] John Telford and John Cosgrove, *Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report* (London, Tsunami Evaluation Coalition, 2006), p. 104.

[30] Michael Lyons and Theo Shilderman, eds. *Building Back Better: Delivering People-Centred Housing Reconstruction at Scale* (London, Practical Action, 2010) (with respect to communities in Sri Lanka); ActionAid, "Tsunami response: a human rights assessment" (2006), pp. 43-47.

[31] Following Hurricane Katrina, women were particularly affected by the lack of affordable/public housing since prior to the storm they had headed the majority of public housing and voucher-subsidized households. See Ferris and Petz, *A Year of Living Dangerously* (see footnote 24 above).

[32] See World Reconstruction Conference: Recovering and Reducing Risks after Natural Disasters: Proceedings (Geneva, May 2011), p. 31.

[33] See report of the United Nations Special Envoy for Tsunami Recovery, William J. Clinton, "Key propositions for building back better" (2006); (Hakan Arslan and Cassidy Johnson, "Turkey: can small actors overcome the absence of state will?", in *Building Back Better: Delivering People-Centred Housing*, Lyons and Shilderman, eds. (see footnote 30 above).

made no mention of land ownership or tenure issues, but only focused on the techniques and costs of housing reconstruction. In addition, policy priorities for other sectors relevant to land, such as agriculture, were said to favour landowners.[34]

22. Often, multiple factors of vulnerability and discrimination have a compounding effect. Post-Katrina responses by the federal and state governments in the United States generally were found lacking when it came to supporting lower-income renters — predominantly African American — and addressing the range of obstacles that prevented them from accessing affordable housing.[35] Despite a federal programme of housing vouchers, in practice, families with rent vouchers had difficulties finding rental units. Reasons included public and rental housing shortages (due to storm damage but also to subsequent decisions to massively cut down public housing), rent increases, discrimination by landowners,[36] the slow pace of rental housing construction and the decision by states in the Gulf coast to direct the bulk of federal funds towards repairing homeowner units rather than rental ones.[37] With a very limited option to rent, an important number of families were de facto denied return to their city and former homes;[38] which resulted in a rise in homelessness.[39]

23. The above examples show how discrimination, as much as vulnerability, is a key factor bearing upon disaster impact and response. Discrimination based on tenure status highlights a broader problem, namely the reluctance or inability of Governments, international and national organizations alike to adequately recognize and protect all forms of tenure equally.

IV. Recognizing and protecting all forms of tenure equally, from restitution to durable solutions programmes

24. The Special Rapporteur notes the centrality of tenure security in the right to adequate housing. Tenure security does not equate to a right to private ownership,[40]

[34] Oxfam, *Land Rights and the Indus flood*, pp. 24 and 25 (see footnote 25 above); Government of Pakistan and others, *Pakistan Floods 2010*, annexes on housing, agriculture and the financial sector (see footnote 25 above). See also part III of the present report for a discussion on tenure/land assessments.

[35] See Advisory Group on Forced Evictions, "Mission report to New Orleans", 26-31 July 2009, and A/HRC/13/20/Add.4, para. 30. A total of 90 per cent of neighbourhoods dominated by public housing were populated by African-Americans, of which 80 per cent were renters in those areas. See Ferris and Petz, *A Year of Living Dangerously*, p. 74 (see footnote 24 above).

[36] The Special Rapporteur welcomes the information received by the Government of the United States of America and concerning the measures undertaken by the Government, including by the Department of Housing and Urban Development, to combat housing discrimination by private and public actors and, inter alia, its measures to combat systematic discrimination caused by restrictive zoning or rental ordinances that discriminate against African-Americans, such as ordinances passed by St. Bernard's Parish after the hurricane.

[37] United States Government Accountability Office, *Disaster Housing: FEMA needs more detailed guidance and performance measures to help ensure effective assistance after major disasters*, 2009, pp. 11-13; "4 Years After Katrina: Housing crisis continues, low-income renters face discrimination", *Facing South*, 21 August 2009.

[38] Ferris and Petz, *A Year of Living Dangerously*, p. 74 (see footnote 24 above).

[39] Advisory Group on Forced Evictions, "Mission report", p. 5 (see footnote 35 above).

[40] In some circumstances, private ownership may in fact not be the most appropriate way to ensure tenure. See A/HRC/10/7.

nor is it limited to the conferral of formal legal titles. There is a multiplicity of legitimate tenure arrangements besides private ownership,[41] such as public or private rental accommodation, cooperative housing, lease, occupation/rent of land or property in informal settlements, and other user or occupancy rights through customary or traditional arrangements all with varying degrees of formality.[42] It follows that only a minority of victims of natural disasters may in effect have individual, formally registered, ownership rights to their housing or land.

25. Nevertheless, the Special Rapporteur is concerned that policy and practice in post-disaster settings are skewed towards individual private ownership, as already shown in section III above. Section IV will focus on policy and practices pertaining to restitution and more broadly to durable solutions and reconstruction, as illustrations of the tensions between individual property ownership and other forms of tenure in practice.

A. Towards an expansive notion of housing and property restitution

26. The right to housing and property restitution has found its most specific elaboration in the Pinheiro Principles. At the time of their adoption the Principles responded to an obvious need for guidance on the procedures and mechanisms necessary to facilitate property restitution. Today, as programmes for return and restitution have been applied in more diverse contexts and circumstances, it is time to reflect on the Principles and reinterpret them in the light of such practices.

27. The Principles, in their specific formulation and the mechanisms suggested to determine claims over property or land, are not entirely clear on the recognition of all forms of tenure rights. While some take an expansive view of the Principles,[43] others have criticized them as being overly focused on individual property ownership and contexts of formal and registered claims. By referring "the rights of tenants and other non-owners" in a separate provision (principle 16), the Principles may be seen to question whether these are on an equal footing with individual property owners. Equally, the call in the same principle for mechanisms of property restitution to recognize, "to the maximum extent possible", those with rights to housing and land other than formal ownership needs clarification, although it could be seen as a practical suggestion rather than implying limitations to the entitlements of non-owners.[44]

28. The Principles must also be read against the particular context in which they were developed. While drawing on a number of sources, they were shaped by the experience of formal restitution mechanisms operating at the time, in particular in Bosnia and Herzegovina — a context of largely formal registration of private

[41] See comments on the report of the Special Rapporteur (A/HRC/16/42/2010) by delegations supporting this view, Human Rights Council, sixteenth session.

[42] The Special Rapporteur notes the categorization used among humanitarian agencies of "six tenure options", an acknowledgment of the need to also address other forms of tenure. United Nations and Shelter Centre, *Shelter after Disaster* (2010), p. 107.

[43] Langford and Moyo, "Right, remedy or rhetoric?", pp. 148 and 149 (see footnote 15 above).

[44] See also recognition of the possessory rights of traditional and indigenous communities, principle 15.3, separate from principle 16.

property and of what Yugoslav law called "socially-owned" apartments.[45] The restitution mechanism in Bosnia and Herzegovina, like others, has been criticized for doing little for those who did not own property or did not have recognized formal titles to them, and for being unable to deal with complex, informal systems of tenure with a plurality of customary, state or religious laws.[46]

29. The Special Rapporteur suggests that housing and property restitution must be understood as the restitution of any right to tenure related to housing or land prior to disaster, irrespective of tenure status or whether the land or housing is formally registered. An example of such an approach can be found in the South Africa Restitution of Land Rights Act, and in recent operational guidance on durable solutions.[47] Without pre-empting deeper discussion and clarification of their provisions, the Pinheiro Principles should be systematically viewed to embrace a wide ambit of situations and tenure rights. A number of elements in the Principles already point to an appropriately expansive conception of restitution, such as the systematic use of the term "housing, land and property" rather than only property.[48]

30. This more expansive view of restitution is grounded in the State obligations associated with the right to adequate housing to respect and ensure tenure security for all, irrespective of the form of tenure. The approach recognizes all those who are not individual owners of formally registered property as rights-holders. While post-disaster and post-conflict needs will vary with the context, the typology of human rights duties remains the same. Property restitution should be viewed and implemented in this light.

31. The practical implications of this expansive view of restitution as part of the right to remedy should be further examined with a view to articulating guidance on various scenarios.[49] For the purpose of the present report, however, and bearing in mind the qualified assessment of the Pinheiro Principles with respect to disaster situations (see section II above), property restitution will more often than not be a condition for return and other durable solutions, not a legal remedy. Understanding the equal legitimacy of all forms of tenure is thus not only relevant to restitution but even more so to efforts to ensure durable solutions and recovery. In such cases, States, with international organizations, must assess the tenure rights of all people affected by disasters and take measures to protect and ensure secure tenure post-

[45] See http://www.ohr.int/plip; Norbert Wühler and Heike Niebergall), eds., *Property Restitution and Compensation: Practices and Experiences of Claims Programmes* (Geneva, International Organization for Migration, 2008).

[46] Rhodri Williams, "Post-conflict property restitution in Bosnia: balancing reparations and durable solutions in the aftermath of displacement", presented at TESEV International Symposium on internal displacement in Turkey and abroad, Istanbul, December 2006; Conor Foley, Ingunn Sofie Aursnes, "Land, housing and property restitution after conflict: principles and practice", *Humanitarian Exchange Magazine* (2005), p. 2. Norwegian Refugee Council, on Afghanistan's special property restitution court, 2005.

[47] Office of the President, No. 22 of 1994, Restitution of Land Rights Act, chapter I (1) xi; Inter-Agency Standing Committee, *Framework on durable solutions for internally displaced persons* (Washington D.C., The Brookings Institution, 2010), p. 35.

[48] See also principles 8 and 15.2; E/CN.4/Sub.2/2005/17/Add.1, para. 62; Langford and Moyo, "Right, remedy or rhetoric?" (see footnote 15 above).

[49] Including situations whereby tenure rights are solely based on use, or whereby restitution is materially impossible, such as in cases where tenants are unable to return to their places of residence, or the original sites have disappeared or been declared *non-aedificandi* after the disaster.

disaster, whether at a former place of residence or elsewhere, should people be unable or unwilling to return.[50] Furthermore, the principle of non-discrimination and equality requires States and international organizations to prioritize assistance to those with most insecure tenure and strengthen tenure security for those with weak, ambiguous or vulnerable tenure, a responsibility often overlooked in relief and recovery efforts.

B. Recognizing tenure rights in practice, for the purpose of durable solutions

32. International agencies have shown reluctance to invest in places of return or relocation where land tenure is unclear and where legal and customary arrangements under which claims regarding ho[illegible]ing or land may fall are diverse and at times conflicting. In that respect, reconstruction in urban areas might be particularly challenging since the areas they are often characterized by complicated land ownership and tenure issues.

33. This mindset is evident among many organizations operating in Haiti. As evident in one assessment:

> The condition of land markets is chaotic and essentially lawless. Land ownership records are non-existent or ambiguous. Lack of clear title to a plot of land or written approval from a verified owner makes it difficult to supply a potential beneficiary with a new house or to support re-occupancy of prior homes.[51]

Clearly, this has been one of the reasons for the delay in reconstruction and return in Haiti. Similarly, in the aftermath of the Indian Ocean tsunami, the promulgation of contradictory policies and restrictions on land use at various levels of government and the contention surrounding these were said to have created obstacles to international recovery work and severely undermined efforts to pursue disaster risk management.[52]

34. Against this backdrop it is important to differentiate between two tasks. In the long term, there might be a need to formally record and strengthen ownership or tenure through legal reforms and other mechanisms such as land titling, thereby definitively resolving the ambiguous and uncertain situation in which many find themselves. In the short term, however, these means may not be the most appropriate to address reconstruction and recovery needs and to do so without

[50] Importantly, someone's right to tenure is not dependent on the actual reoccupancy of a former place of habitual residence.

[51] International Housing Coalition, "Haiti shelter sector assessment: one year after the earthquake" (April 2011), p. 12.

[52] Telford and Cosgrove, *Synthesis report*, p. 102 (see footnote 29 above); and Ian Christoplos, *Links between Relief, Rehabilitation and Development in the Tsunami Response: a Synthesis of Initial Findings* (London, Tsunami Evaluation Coalition, 2006), p. 71.

reinforcing inequalities.[53] Experience also suggests the enormous challenge of attempting to deal with the full spectrum of ownership/tenure and land reform issues right after disaster or conflict. The Government of Pakistan noted that an appreciation of the social, political, technical and legal complexities of land tenure issues and the fact that those were not confined to the disaster-affected areas was essential.[54] In the short term, it remains nonetheless essential and opportune to assess pre-disaster tenure rights, through swift methods, in order to move effectively towards reconstruction and recovery in a way that ensures a minimum of tenure security to everyone and addresses some of the worse forms of inequality and insecurity.

35. The optimal means for determining housing or land claims for the purpose of reconstruction and return will depend on the particular context, in terms of tenure or property arrangements, formality and registration, and resources. As discussed, formal administrative or judicial property restitution mechanisms might not be applicable or appropriate in a number of situations, in particular those characterized by multiple tenure arrangements.[55] The Protocol on the Property Rights of Returning Persons of the International Conference on the Great Lakes Region offers a more comprehensive approach than the Pinheiro Principles in this regard, by providing that both administrative and traditional authorities should address property disputes, thereby acknowledging the importance of traditional and customary systems with regard to land.[56] The Protocol also envisages alternative and informal community-based mechanisms for resolving disputes, using requirements of proof of ownership based upon testimony.[57] In practice, organizations supporting return of refugees or displaced persons have often relied on customary law and traditional conflict resolution mechanisms to solve land disputes.[58] Caution must however be exercised so that women or others particularly vulnerable to discrimination are not excluded or disadvantaged in these processes.

36. One step further are "community" or "participatory" enumeration practices. Such participatory processes have been implemented in various countries for various aims, for instance to determine and strengthen tenure rights in informal settlements or for land adjudication.[59] In the absence of land records, in case of their destruction following disaster, or in context of multiple tenure arrangements,

[53] With respect to Haiti, it was commented that "a strict asset-replacement approach to housing provision and a rush to confirm property rights … will not be appropriate to meet the housing needs of the majority of the affected population who are tenants and squatters rather than owners". A proposal to move quickly with the implementation of a cadastre was considered inappropriate, with the potential to "reinforce biases towards the most established and powerful formal owners able to produce documentation". Kate Crawford and others, "Coordination and the tenure puzzle in Haiti", *Humanitarian Exchange Magazine* No. 48 (2010), p. 8.

[54] Comments received on an earlier draft. Similarly, the Government of Timor-Leste chose a long time frame to address land issues. Comments by Timor-Leste on the report of the Special Rapporteur (A/HRC/16/42), 8 March 2011.

[55] Formal special mechanisms are also resource- and time-consuming. See Kosovo property agency annual report, 2010.

[56] International Conference on the Great Lakes Region, Protocol on the Property Rights of Returning Persons (Great Lakes Protocol), 2006, article 4.

[57] Great Lakes Protocol, article 4 (3).

[58] See A/HRC/16/42, paras. 44 and 45 (on Timor-Leste); and Foley and Aursnes, "Land, housing and property" (see footnote 46 above).

[59] United Nations Human Settlements Programme, *Count Me In: Surveying for Tenure Security and Urban Land Management* (Nairobi, 2010).

community enumerations offer promising and flexible alternatives to identify the state of occupancy and tenure pre-disaster or pre-conflict, thus ensuring a certain level of certainty and security of tenure in informdurable solutions. Community enumeration projects were implemented in the wake of the Indian Ocean tsunami,[60] and have been started in Haiti. Lessons should be drawn from experience in defining key elements and prerequisites of successful community mapping processes, applied to post-disaster situations, including their relationship with more formal or Government-led validation or land management processes, and the need to complement them with conflict resolution mechanisms.[61]

37. While mechanisms to assess, respect and strengthen tenure security post-disaster will differ depending on the context, they must in any event be guided by human rights principles, such as participation of affected communities and gender equality.

V. Disasters as opportunities — for whom?

38. It is often said that disasters, by creating a "clean slate", offer major opportunities to launch into wide scale reforms and ambitious redevelopment. Disasters offer opportunities, but also serious risks, for the protection and promotion of human rights. The Special Rapporteur is concerned that in some cases, major redevelopment efforts, while benefiting some, have, by commission or omission, overlooked the most vulnerable and in fact violated key elements of the right to adequate housing.

A. From the redevelopment of coastal areas and cities to outsourcing reconstruction

39. The 2004 Indian Ocean tsunami was seen by many as providing major opportunities for redevelopment, sometimes under the guise of public safety and disaster risk mitigation. In the tsunami's aftermath, zones prohibiting housing reconstruction along the coast (buffer zones) were in fact introduced in a number of countries affected by the tsunami; they ranged from 100 to 500 metres and, in some cases, if implemented fully, would have required the relocation of over 100,000 houses.[62] The zones were purportedly declared to protect residents from future disasters. They also had major impacts on the livelihoods of residents, especially those who relied on the sea for a living.

40. At the same time, ambitious plans for "redevelopment" and luxury tourism emerged, including for those coastal areas closed off to residents for safety reasons. One tourism board announced at the time that the tsunami offered an opportunity to make of its country a "world class tourism destination".[63] It was reported that while

[60] Ibid. (on Aceh, Indonesia), pp. 79-83; and Harper *International Law*, p. 209 (see footnote 9 above).

[61] *See World Reconstruction Conference: Recovering and Reducing Risks*, pp. 33 and 34 (see footnote 32 above).

[62] Oli Brown and Alec Crawford, "Addressing land ownership after natural disasters: an agency survey", 2006, p. 6; and Human Rights Watch, "After the deluge: India's reconstruction following the 2004 tsunami", p. 41. Some of the most important restrictions were ultimately abandoned.

[63] Tourism Concern, "Post-tsunami reconstruction and tourism: a second disaster?", 2005.

displaced persons were prohibited from returning to their homes, the same prohibition did not apply to hotel complexes. In some places, land developers simply used the opportunity to grab land, especially from the most vulnerable communities. Luxury hotels sprang up in many coastal areas. Communities and civil society organizations complained that the creation of zones was used to arbitrarily evict poor coastal dwellers and indigenous communities to the benefit of businesses and new tourism facilities.[64]

41. The destruction of much of the housing stock in New Orleans after Hurricane Katrina was also seen as an opportunity to fundamentally change the housing and urban characteristics of the city. Notably, the four largest public housing complexes in New Orleans (the "big 4"), mostly inhabited by African Americans, were demolished to give way to planned redevelopment of mixed-income communities and other uses. Although in some cases there may have been no feasible alternatives because of the severity of the damages, the demolitions were mainly justified as essential to the city's recovery and necessary for health and safety reasons.[65] Problematically, the planned developments were to include a small number of public housing units compared to the total available before Hurricane Katrina.[66] Their demolition was another obstacle preventing lower income residents from returning to New Orleans (see sect. III above).[67]

42. Concerns have also been expressed over what has been called "the business of reconstruction", whereby the planning, financing and implementation of reconstruction are outsourced to private companies. In some cases, outsourcing reconstruction without putting adequate safeguards in place has been associated with negative impacts on the adequacy and affordability of reconstruction as well as on people's ability to participate in and benefit from reconstruction efforts. In Chile, following the earthquake and subsequent tsunami of February 2010, the private sector reportedly played a central role in the reconstruction of urban centres and coastal areas. Following one of the main principles of the national reconstruction plan, families have the choice to decide whether to rebuild their homes on the same sites of the collapsed buildings or to acquire a previously existing or a newly built house. However, as housing reconstruction was supported mainly by subsidies attached to individual property, private constructors preferred to rebuild housing in new areas on the outskirts of towns, rather than the central areas from which many people had been displaced, where land and housing prices were much higher.[68] Real estate companies were also said to pressure families to sell land and housing at very

[64] Action Aid, "Tsunami response", pp. 17 and 18 (see footnote 30 above); Malcolm Langford and Jean du Plessis, "Dignity in the rubble? Forced evictions and human rights law"; and Brown and Crawford, "Addressing land ownership" (see footnote 62 above).

[65] Julia Cass and Peter Whoriskey, "New Orleans to raze public housing", *Washington Post*, 8 December 2006.

[66] Amnesty International, "UN-Natural disaster: human rights in the Gulf coast", 2010, p. 6; and Advisory Group on Forced Evictions, Mission report, pp. 5, 28-32 (see footnote 35 above).

[67] A/HRC/13/20/Add.4, para. 30. The Special Rapporteur welcomes the information received from the Government, as well as the fact that, owing to a combination of housing policies, there are now more housing subsidies beneficiaries in New Orleans than prior to Hurricane Katrina.

[68] 2011 report on the earthquake-tsunami of 27 February 2010 and the reconstruction process in Chile, prepared for the Special Rapporteur on the right to adequate housing by Habitat International Coalition, Habitat for Humanity, the Housing Institute of the Faculty of Architecture and Urbanism, the Observatory of Reconstruction, "Sur Maule", "Let's build" and "Observatory and Housing" networks.

low prices in a moment where they were very vulnerable, in order to make way for private redevelopment.[69] This shows that if left only to the market, new housing for the poorest will likely be in the peripheries.

43. Similar distortions were seen with respect to the construction market. In one case, it has been reported that in some cities a few companies were given a monopoly over construction materials, to the detriment of local small businesses, and in another, the reconstruction process led to increased prices by suppliers and construction companies, stymying individual reconstruction efforts.[70] Likewise, the outsourcing of transitional shelters by humanitarian agencies to international contractors might divert potential financial resources for displaced persons who could be supported to build their own shelter. The results in the latter instances are also less likely to be culturally appropriate.[71]

B. Acting with due diligence to protect the right to adequate housing

44. In the examples discussed above, post-disaster reconstruction has had negative impacts on the poorest. In the worst cases, disasters provided a clean slate and excuse for powerful actors to destroy housing or grab land, which would not have been possible in the pre-disaster context, where legal procedures would have had to be followed and affected households consulted and given access to remedies. At best, States did not adequately monitor the operation and regulation of the post-disaster housing and reconstruction markets, nor did they take measures to ensure that people retained access to affordable housing and were not in effect forced to leave their places of origin. While nothing prevents States from asking for the support of private companies in reconstruction efforts — and indeed private sector contributions can be essential to recovery — Governments must be mindful of their role to monitor private sector delivery and ensure that reconstruction does not benefit only a privileged few to the detriment of others.

45. Such examples could be seen as "constructive forced evictions".[72] In such cases, international standards pertaining to forced eviction or arbitrary displacement apply. When forced eviction has been proved, people should have access to remedies, including to a fair hearing, access to legal counsel and to receiving reparation, such as housing or land restitution, adequate compensation, or alternative housing/land if they so choose.[73]

46. In cases where public security and safety concerns are legitimate and compelling, decisions over land use or housing regulations must nonetheless be subject to human rights standards — in particular the strict procedural requirements

[69] Ibid.

[70] Ibid; see also A/HRC/13/20/Add.3, para. 25.

[71] See by contrast the success of "owner-driven approaches" to reconstruction. World Reconstruction Conference: Recovering and Reducing Risks, pp. 25-27 (see footnote 32 above).

[72] Malcolm Langford, "The right to return and resettlement after the tsunami disaster", *Disaster Brief*, vol. 2 (2) (July-September 2005). The term "constructive eviction" is used in some countries to describe actions or omissions by a landlord that make the premises unhabitable or unsuitable for the purposes for which they were leased.

[73] Committee on Economic, Social and Cultural Rights, General Comment No. 7, General Assembly resolution 60/147, entitled "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; and the Pinheiro Principles.

relating to the conduct of evictions, the right to redress and remedy and an opportunity for judicial review, and the economic, social and cultural rights of affected communities. Evictions should not result in individuals being rendered homeless. Where those affected are unable to provide for themselves, the State must take measures to ensure that alternative housing, resettlement or access to productive land is available.[74]

47. Restrictive measures must also conform to the principle of proportionality.[75] This calls for a balancing act between the rights of those affected with the interests of the State in mitigating the damage and ensuring public safety.[76] With respect to tsunami prevention for instance, any regulation preventing residents from returning to beachfront areas must be shown to be the least restrictive means of achieving public safety objectives. A State would have to show that other safety measures such as warning systems or dykes are not available or effective.[77]

48. Finally, experience with respect to land use restrictions compels consideration of a range of factors, including that resettling people involves large costs in terms of infrastructure and services and may also severely disrupt people's livelihoods and community lives.[78] Settlement and housing patterns are not random but reflect a specific economic and social fabric that may be difficult to replicate elsewhere. Thus, both human rights standards and an assessment of the social and economic costs of displacement call for a more restrictive approach to the application of land/housing use restrictions.

VI. Recovery and durable solutions: addressing all aspects of the right to adequate housing

49. Beyond the more obvious protection aspects discussed above, it is important to address reconstruction from a broader view of adequate housing — including seeing housing as a social asset — and with the aim to progressively realize the right. Ensuring recovery and durable solutions, seen in this light, means rebuilding communities and neighbourhoods and ensuring an adequate standard of living, of which housing unit construction is only one part, sometimes not the most important or urgent.[79] Disasters do not take place in a vacuum: it is important to assess and address the wider housing context in which disasters take place.

[74] General Comment No. 7, para. 16. Inter-Agency Standing Committee Guidelines, C.2.4, C.2.5.

[75] Human Rights Committee, General Comment No. 27, on freedom of movement.

[76] "Protection of internally displaced persons in natural disasters: a working visit to Asia by the Representative of the Secretary-General on the human rights of internally displaced persons", Walter Kälin, 2005, p. 22.

[77] Langford, "The right to return and resettlement" (see footnote 72 above).

[78] World Bank, *Hazards of Nature, Risks to Development: an IEG Evaluation of World Bank Assistance for Natural Disasters* (Washington, D.C., 2006); Active Learning Network for Accountability and Performance in Humanitarian Action, "Responding to earthquakes, 2008: learning from earthquake relief and recovery".

[79] Inter-Agency Standing Committee, *Framework on Durable Solutions* (see footnote 47 above). Lessons could be drawn from good development practices on resettlement, for instance: Michael Cernea and Christopher McDowell, eds., *Risks and Reconstruction: Experiences of Resettlers and Refugees* (Washington, D.C., World Bank, 2000).

A. Undue focus on houses and property

50. Post-disaster situations are likely to be characterized not only by massive damage to housing but also by mass displacement, disruption of social networks and relationships, damage or lack of access to basic services and loss of livelihoods, employment, assets, or land, which are all key factors that have an impact on enjoyment of the right to adequate housing. However, reconstruction and efforts to ensure durable solutions have too often focused on the most tangible aspects of housing (the physical structures). International organizations and Governments are prone to assume that housing reconstruction is the main priority for affected persons, rather than livelihoods or neighbourhood infrastructure.[80] When housing is assessed it is assessed as a technical or economic sector rather than as a human right, and the focus is on building and construction standards and materials, and on the quality of emergency and transitional shelters. In some cases the focus on property restitution has also been to the detriment of rebuilding and improving the broader social, political or economic conditions required to support sustainable return — jobs, basic services and infrastructure, and security. A commentator stated that, the "house" had become the measure of success of the return process rather than the actual welfare of the people displaced from their homes.[81]

51. The well-known slogan, "Build Back Better", seems to, and certainly should, aspire to address the broader living conditions of affected communities. The special envoy of the Secretary-General to the Indian Ocean tsunami noted that the financial resources, international focus and openness to political and policy reform that often characterized a post-crisis period should allow for "build back better" and break out of inequitable development patterns in a sustained way.[82] Similar calls were made to consider the Pakistan floods as "an opportunity to build back better lives and to step up to the task of bringing dignity to the millions who live on the margins of society".[83] However, implementing this inspiring idea is often reduced to its most technical meaning, for instance building houses using flood- and seismic-resistant standards.[84]

52. By contrast, a number of reconstruction projects worldwide have attempted to see the reconstruction process "as an opportunity to promote a local development process" rather than being limited to restoring pre-disaster conditions — the participation of communities being essential in that regard.[85]

[80] See for instance, with reference to housing construction in Indonesia, Lyons and Shilderman, eds., *Building Back Better*, p. 157 (see footnote 30 above).

[81] Megan Ballard, "Post-conflict property restitution: flawed legal and theoretical foundations, *Berkeley Journal of International Law 462* (2010) (with respect to Bosnia and Herzegovina).

[82] United Nations Special Envoy for Tsunami Recovery, "Key positions for building back better" (see footnote 33 above).

[83] Government of Pakistan, Asian Development Bank and World Bank, *Pakistan Floods*, p. 7 (see footnote 25 above).

[84] Ibid., pp. 22 and 94.

[85] See for instance projects in Peru: Lyons and Shilderman, eds., *Building Back Better*, pp. 307-344 (see footnote 30 above).

B. Addressing the wider context in relief and recovery efforts

53. As mentioned above, the earthquake in Haiti highlighted the largely inadequate housing conditions and the precariousness and insecure tenure of informal settlements. The international community, by focusing on people displaced in camps, and by offering conditions superior to those enjoyed by many Haitians, inadvertently made camps attractive places. While systematic reconstruction accompanied by the provision of services in neighbourhoods of return is not forthcoming, there is thus little reason for poor families to leave the camps where housing and services are provided free of charge. Although understandable from an emergency perspective, a narrow focus on the plight of internally displaced persons and temporary solutions becomes, amidst a difficult socio-economic and tenure context, an obstacle to long-term recovery, and in some cases may result in further development problems.[86] Such situations are bound to become more frequent, with increased urbanization, much of which occurs in an unplanned manner (see A/64/255, paras. 13-21).

54. The situation in Haiti also serves as an example of the challenges facing the basic rationale for reconstruction and property restitution: in contexts characterized by massive poverty and grossly inadequate living and housing conditions, the question remains as to whether the final goal of reconstruction should be to provide high-quality houses for those who lost their dwellings in the disaster. The Special Rapporteur believes that interventions must instead aim to progressively realize the right to adequate housing for all. In Haiti, reconstruction and recovery have less to do with the construction of new houses for individuals directly affected by the disaster than with the improvement of the overall living and housing conditions in the unplanned and unserviced settlements affected by the disaster. The approach should thus focus on settlements and communities, not individual constructions, and the aim to create places where people can have an adequate standard of living.

55. Land use planning post-disaster can be a powerful instrument to provide both a reference for reconstruction and a legal basis for action in the immediate aftermath of a disaster. Post-disaster zoning can recognize de facto settlements, opening ground for investment in infrastructure and upgrading of hitherto unserviced and unplanned settlements in order to facilitate return and reconstruction.

56. From a human rights perspective, investment in upgrading settlements characterized by grossly inadequate living conditions as part of disaster response is not only legitimate but also indispensable, bearing in mind the obligation of non-discrimination and attention to the most vulnerable. Moreover, for principled and pragmatic reasons, in a number of contexts it would be important to address the situation from a longer-term perspective: in the context of Haiti, this means a focus on improving conditions in settlements not damaged by the disaster (provided they are not in disaster-prone areas) but with the same urbanistic and vulnerability characteristics as those affected by it.

[86] The case of "Camp Corail" at the outskirts of Port-au-Prince epitomizes such difficulties. Intended as a temporary camp for the displaced living in areas most at risk, it has attracted people from everywhere and has been transformed within a few months into a new informal settlement, with at least 50,000-60,000 residents as of May 2011.

C. Disconnect between emergency and long-term recovery

57. The above examples also illustrate the existing disconnect between the emergency phase and longer-term recovery, as well as the difficulties of the international community, in many contexts, to manage the transition from one to the other.[87]

58. A focus on individual beneficiaries and on "deliverables" — food, shelters, health kits — as ends in themselves might divert from the fundamental responsibility to respect, protect and fulfil rights (to housing, water, health, for instance), and the requirement to think of the long term. In Haiti, it was reported that immediate needs had dominated the international community's response and that specific pledges to support permanent housing requirements had therefore been less significant.[88] The Haiti Shelter Cluster of the Inter-Agency Standing Committee reported on the risks of institutionalizing camps and of consuming scarce resources in emergency measures at the expense of more durable permanent solutions were recognized.

59. Similarly, the massive construction of transitional shelters might not always be required or appropriate and in some cases might impede durable solutions, such as in dense, urban settings where people might be prevented from incrementally building permanent housing due to lack of space. The production of these shelters might unintentionally divert resources from the reconstruction of permanent housing and neighbourhoods, in a context of diminishing attention and aid flows over time.[89] It is thus not uncommon, regrettably, for people to live in transitional shelters many years following a disaster (see A/HRC/13/20/Add.4, para. 31). States and international organizations should not automatically assume the need for transitional shelters without considering whether alternative solutions can be supported.

60. Many have made the call for an integrated approach to ensure a continuum of aid between relief and recovery. In the previous report (A/HRC/16/42) to the Human Rights Council, the Special Rapporteur discussed some of the funding issues associated with the issue. The Special Rapporteur would like to encourage donors to support durable solutions and recovery at the earliest time possible and to help to ensure a continuum of aid, including by funding that can be flexible enough to do so.

VII. Conclusion

An approach to disaster response deliberately and comprehensively integrating the right to adequate housing

61. **Integrating the right to adequate housing into disaster response has broad implications. In practice, however, comprehension of the right to adequate**

[87] John Holmes, "Learning the lessons of Haiti", *Humanitarian Exchange* No. 48 (October 2010), p. 3.

[88] United States of America strategy entitled "Post-earthquake United States Government Haiti strategy: towards renewal and economic opportunity" (2011).

[89] In Haiti, a T-shelter costs $2,500 on average, while the cheapest estimates for permanent housing are around $3,500 per house.

housing and its application to disaster response has been limited to only some aspects of the right, most notably linked to physical structures and individual property ownership. In some cases, reconstruction and recovery efforts — by omission or commission — have had a detrimental impact on victims of disasters and their enjoyment of the right to adequate housing.

62. In the view of the Special Rapporteur, making comprehensive efforts to realize the right to adequate housing in reconstruction efforts is not only an obligation but also an opportunity. While disaster response will not — and should not — replace development efforts, it provides an occasion to redress the inequalities that either exacerbated the natural disaster's impacts or were made visible by it, and to contribute to efforts to progressively realize the right to adequate housing for all, notably by improving tenure security.

63. The recommendations below outline the fundamental elements of an approach to disaster response that is fully based on the right to adequate housing. They are meant to complement existing guidance when it comes to ensuring protection and realization of the right to adequate housing. Unless stated otherwise the recommendations are addressed to Governments, and international donors and organizations. Finally, recommendations for follow-up are provided, bearing in mind that the framework only outlines general principles that will need to be further refined and operationalized.

VIII. Recommendations

64. The Special Rapporteur makes the following recommendations:

A. General framework: disaster response based on the right to adequate housing

Overarching principles

1. Right to adequate housing

In all phases of disaster response the right to adequate housing should be respected and protected. It should be understood as the right to live in safety and security, in conditions deemed adequate on grounds of security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.

2. Security of tenure

The multiplicity of forms of tenure should be recognized equally and Security of tenure should be ensured for everyone post-disaster.

3. Participation

- All affected persons and groups should have access to information and be able to participate meaningfully in the planning and implementation of the various stages of the disaster response.

- **In particular, all affected persons and groups should have the opportunity to participate in the identification and determination of tenure rights; the choice over, planning and implementation of transitional shelter and permanent housing programmes, and of durable solutions (return, local integration, resettlement); and in decisions over land use planning and restrictions.**

- **Women's participation must be ensured.**

4. **Non-discrimination and vulnerability**

- **In post-disaster needs assessments (for both emergency and recovery), pre-disaster inequalities and vulnerabilities should be identified, whether based on race, socio-economic status, tenure, gender or any other relevant grounds.**

- **In recovery plans, programmes should be devised to specifically address inequalities identified.**

- **Special measures should be taken to redress discrimination and ensure the realization of the right to adequate housing for the most disadvantaged groups, including through measures to strengthen tenure security for those with insecure status and/or through the prioritization of housing reconstruction and the provision of alternate housing, such as social or public housing, for the most vulnerable.**

Operational principles

1. **Equal rights to shelter and housing**

- **All affected persons, irrespective of their tenure status pre-disaster, should have equal rights to shelter in the emergency and transitional phases.**

- **Shelter and housing must fulfil the requirements of adequacy in international human rights law.**[90]

2. **Do no harm**

No harm should be caused by or to others in respecting and protecting the right to adequate housing, including tenure security:

- **Existing land, housing and identity records should be protected.**

- **Housing, land and property should be protected from further damage or destruction.**

- **States must prohibit and sanction forced evictions by Government and private actors alike.**

- **Health and safety regulations as well as disaster risk reduction measures, which may call for land use or housing restrictions, must be subject to human rights standards: their impacts on the human rights of individuals and communities must be assessed, and due process rights, and the rights to information and participation, must be upheld in all circumstances.**

[90] See overarching principle No. 1.

- Efforts must be made to ensure that humanitarian and shelter assistance, as well as the restitution laws, mechanisms and institutions that may emerge in post-disaster situations, do not intentionally or by default discriminate on the basis of tenure status.

3. Tenure of "non-formal owners"

The tenure rights of "non-formal owners", namely those without individual, formally registered, property ownership, should be honoured:

- All pre-disaster tenure rights, including in disaster damage and needs assessments, should be assessed and recorded.
- In contexts where property and ownership are not formally registered, fast-track mechanisms to determine tenure rights, notably community-led processes (community enumeration), should be considered an essential element of and prerequisite to the implementation of restitution, reconstruction and recovery programmes.
- Housing and property restitution must be understood as the recognition and restitution of all tenure rights to housing or land.
- For those with insecure tenure, measures should aim at strengthening their security of tenure, for instance by granting rights to housing or land at places of origin, either immediately or in incremental stages. When restitution or return is not desirable for the affected persons or is not possible owing to land having disappeared or to compelling safety reasons that prevent the return, alternative housing or land should be granted at another location.
- Measures must be taken to support the repossession of or alternative access to adequate housing or land for all non-formal owners, with a particular focus on the most vulnerable.

4. Context of relief and recovery programmes

Relief and recovery programmes should be addressed within the overall housing context (of an area/city/country):

- In post-disaster needs assessments, major pre-disaster impediments to the realization of the right to adequate housing should be identified, as should the impact of pre-disaster situations on durable solutions and the recovery process.
- The broader housing situation, including unplanned and unserviced settlements, should be addressed through targeted programmes in conjunction with programmes for disaster response and with a focus on the most vulnerable populations.

5. Rebuilding communities

Communities and settlements, not just houses, should be rebuilt or resettled:

- Reconstruction should not only apply to physical structures but should also include or prioritize, as appropriate and according to the needs and

requests of affected persons, the rebuilding or setting up of basic infrastructure and services and the upgrading of settlements.

- Community structures and networks, to the extent that they respect international human rights standards including on gender equality, should be deliberately preserved and supported.

6. Compliance with international standards

If return is impossible because the land has disappeared or there are objective safety grounds preventing return, of if it is not desired by the affected individuals or groups, resettlement and local integration conditions must comply with international human rights standards and guidelines pertaining to adequate housing, evictions and displacement.

7. Disaster risk reduction legislation

States must adopt disaster risk reduction legislation that respects the right to adequate housing. Special attention must be given to those who may face discrimination and exclusion, including on the grounds of tenure status, and measures must be devised to protect them.

B. Recommendations for follow-up

1. United Nations agencies and mechanisms, the Inter-Agency Standing Committee or organizations that are members of or cooperating with it, should consider undertaking further research on the practical integration of the right to adequate housing in disaster response, taking as a starting point the framework proposed by the Special Rapporteur.

2. Further work should be conducted on:

- The mechanisms to support the fast-track determination of tenure rights, including community mapping and enumeration, drawing lessons from existing practices to advise on their essential features and application in post-disaster situations.

- The legal and practical measures needed to support, in post-disaster situations, all those who are not individual owners of formally registered property.

- Territorial planning and land use instruments and tools and their potential to provide a technical and legal foundation for return and reconstruction programmes.

- The access to use and control over land in situations of natural disasters, including conditions for land requisition and acquisition for shelter/settlement.

3. In their examination of State reports and country visits, United Nations human rights mechanisms should assess and make recommendations on the enjoyment of specific human rights in natural disaster situations, as well as the extent to which disaster prevention, relief and recovery efforts contribute to their enjoyment.

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Item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

Note by the Secretary-General

The Secretary-General has the honour to transmit to the Members of the General Assembly the report of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephas Lumina, submitted pursuant to Human Rights Council resolutions 7/4 and 16/14.

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Report of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

Summary

Export credit and investment insurance agencies, commonly known as export credit agencies, are collectively the principal source of public financing for foreign corporate involvement in large-scale industrial and infrastructure projects in developing countries and emerging economies. In recent years, export credit agencies have assumed an increasingly important role in the global economy, particularly in the context of the global financial crisis.

Nevertheless, many projects supported by export credit agencies have harmful environmental, social and human rights consequences and are not financially viable. Numerous reports have documented human rights violations arising from or associated with projects supported by export credit agencies, including forced displacement of local populations, violation of the rights of indigenous peoples, denial of access to basic services and environmental damage. In addition, export credit agencies tend to be secretive and often lack transparency and accountability in their funding decisions and operations.

The present report, submitted in accordance with Human Rights Council resolutions 7/4 and 16/14, aims to focus attention on the adverse impact of export credit agency-supported activities on sustainable development and the realization of human rights in the countries where such activities are undertaken. It also examines the contribution of export credits to the debt burdens of those countries.

The report calls upon States to address the negative impact of export credit agency-supported projects and makes some recommendations on measures to ensure that the activities of export credit agencies do not undermine the international human rights and other obligations of their home and host States and do not contribute to human rights violations.

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I. Introduction

1. Export credit and investment insurance agencies, generally known as export credit agencies, are collectively the largest source of public financing for foreign corporate involvement in large-scale industrial and infrastructure projects, particularly in the extractive industries sector, in developing countries.[1] In 2005, export credit agencies from the member countries of the Organization for Economic Cooperation and Development (OECD) provided $125 billion in credit, insurance, guarantee and interest support.[2] In 2007, export credit agencies collectively supported $1.4 trillion in trade and investment, equivalent to around 10 per cent of the world's total export trade.[3] It is estimated that the activities undertaken by export credit agencies exceed those of all multilateral development banks and overseas development agencies and that they directly finance one in every eight dollars of world trade.[4]

2. In recent years, export credit agencies have assumed an increasingly important role in the global economy, particularly in the context of the global financial crisis. In April 2009, the Group of 20, at its summit meeting in London, and OECD member countries pledged to provide extra support for export credits to help increase international trade flows.[5]

3. Nevertheless, a significant number of the projects supported by export credit agencies, particularly large dams, oil pipelines, greenhouse gas-emitting coal and nuclear power plants, chemical facilities, mining projects and forestry and plantation schemes, have severe environmental, social and human rights impacts.[6] Numerous reports have documented the adverse human rights impact of projects supported by export credit agencies, including forced displacement of local populations, State repression, violations of the rights of indigenous peoples, denial

[1] See Doug Norlen, Rory Cox, Miho Kim and Catriona Glazebrook, eds., *Unusual Suspects: Unearthing the Shadowy World of Export Credit Agencies* (Oakland, California, Pacific Environment, 2002), p. 1; Bruce Rich, "Exporting destruction", *The Environmental Forum*, September/October 2000; Malcolm Stephens, *The Changing Role of Export Credit Agencies* (Washington, D.C., International Monetary Fund, 1999), p. 63; Andrew M. Moravcsik, "Disciplining trade finance: the OECD export credit arrangement", *International Organization*, vol. 43, No. 1 (Winter 1989), p. 176; OECD, "Review of official export credit commitments to IDA-only countries (2001-2009)", p. 6, available from www.oecd.org/dataoecd/42/59/36945707.pdf.

[2] See www.oecd.org/dataoecd/30/35/37931024.pdf. See also Karyn Keenan, "Export credit agencies and the international law of human rights" (Halifax Initiative, 2008), p. 1.

[3] See Bruce Rich, *Foreclosing the Future: Coal, Climate and Public International Finance* (Environmental Defense Fund, 2009), p. 5, available from www.edf.org/documents/9593_coal-plants-report.pdf. See also Richard Wainwright, ed., *Exporting Destruction: Export Credits, Illegal Logging and Deforestation* (FERN, 2008), p. 7.

[4] Delio E. Gianturco, *Export Credit Agencies: The Unsung Giants of International Trade and Finance* (Westport, Connecticut, Quorum Books, 2001), p. 1.

[5] The final communiqué of the Group of 20 on the Global Plan for Recovery and Reform states that its leaders will ensure the availability of at least $250 billion over the next two years to support trade finance through the Group's export credit and investment agencies and through the multilateral development banks. See the Global Plan for Recovery and Reform, adopted by the leaders of the Group of 20 on 2 April 2009. Available from www.g20.org/Documents/ final-communique.pdf. See also the statement of OECD on the global financial crisis and export credits dated 22 April 2009. Available from www.oecd.org/dataoecd/51/22/42624233.pdf.

[6] Norlen et al., *Unusual Suspects* (see footnote 1), p. 1.

of access to basic services and environmental damage.[7] In addition, export credit agencies often do not have adequate safeguards and due diligence, lack transparency and have been implicated in corruption.

4. The present report, submitted in accordance with Human Rights Council resolutions 7/4 and 16/14, seeks to focus attention on the adverse impact of export credit agency-supported projects on sustainable development and the realization of human rights in the countries in which such projects are implemented. It also examines the contribution of export credits to the debt burden of developing countries.

II. Overview of export credit agencies

A. What is export credit?

5. The term "export credit" refers to an insurance, guarantee or financing arrangement that enables a foreign buyer of exported capital goods and/or services to defer payment over a period of time (short term, usually under two years; medium term, usually from two to five years; and long term, usually over five years).[8] Export credit is the main type of facility provided by an export credit agency.

B. What are export credit agencies?

6. Export credit agencies are public entities that provide Government-backed or subsidized loans, guarantees, credits and insurance to private corporations from their home country to support exports and foreign investments, particularly in developing countries and emerging markets. Most developed countries have at least one export credit agency, which is usually an official or quasi-official agency of their Government.[9]

7. Although export credit agencies take various organizational forms, they are usually backed by a Government and operate in accordance with a Government mandate. An export credit agency can be: (a) a Government department, as is the case in the United Kingdom of Great Britain and Northern Ireland (Export Credits Guarantee Department) and the United States of America (Export-Import Bank); (b) an autonomous corporation, owned by the Government and independently

[7] See Gabrielle Watson, ed., *Race to the Bottom, Take II: An Assessment of Sustainable Development Achievements of ECA-Supported Projects Two Years After OECD Common Approaches Rev. 6* (ECA Watch, 2003); Stephanie Fried and Titi Soentoro, eds., *A Brief Overview of Export Credit Agencies in the Asia-Pacific Region* (Mumbai, World Social Forum, 2004); Nicholas Hildyard, "Snouts in the trough: export credit agencies, corporate welfare and policy incoherence", Corner House Briefing Paper No. 14 (Corner House, 1999), available from www.thecornerhouse.org.uk/resource/snouts-trough; Keenan, "Export credit agencies and the international law of human rights", p. 1. See also the submission of Amnesty International on the review of the revised recommendation on common approaches on the environment and officially supported export credits in March 2010 (POL 30/002/2010), p. 1.

[8] See OECD, *Export Credit Financing Systems in OECD Member Countries and Non-member Economies: Introduction* (2008). Available from www.oecd-ilibrary.org.

[9] For information on export credit financing systems in OECD member and non-member countries, see www.oecd-ilibrary.org/trade/export-credit-financing-systems-in-oecd-member-countries-and-non-member-economies_17273870.

managed, as in Australia (Export Finance and Insurance Corporation), Belgium (Office national du ducroire/Nationale Delcrederedienst) and Canada (Export Development Canada); or (c) a private company acting as a Government agent or a private-public partnership (where key decisions and risks are taken by the Government, while the company provides the services and undertakes the initial risk analysis), such as those in France (Compagnie française d'assurance pour le commerce extérieur), Germany (Euler Hermes Kreditversicherungs) and the Netherlands (Atradius).[10] These forms are reflected in the funding arrangements: from the national budget, from special Government funds, from loans and capital from the Government or from shares or bonds.

8. Export credit agencies provide support to domestic companies in different ways. They provide loans (directly or through a commercial bank) to foreign buyers to purchase goods and services originating in the agency's home country, thus facilitating the export capacity of local corporations. Financial services offered by export credit agencies also take the form of guarantees for commercial loans and export credit insurance. To obtain a credit guarantee, exporters take out insurance with an export credit agency, which undertakes to pay the exporter should the importer default on payment. Export credit agencies' insurance also cover the losses emanating from political risks, such as nationalization or expropriation without compensation, confiscation of investments, restrictions on conversion of dividends and transfer of profits, currency instability, economic crisis or war. Through the provision of guarantees and insurance, export credit agencies back transactions that would normally be refused in the private market owing to the economic or political risk associated with them.

9. Export credit agencies offer financing at lower interest rates, premiums and fees than those offered by the private markets, and their support entails minor economic requirements and limited (or no) compliance with environmental, social and transparency standards, thus facilitating easier, riskier and faster financial transactions. Nevertheless, for borrowers in developing countries, export credit agency-backed loans still have higher interest rates than many provided by other official sources, such as development banks or agencies.[11]

10. Finally, most official lenders, such as the World Bank, the International Monetary Fund and other development agencies, ostensibly aim to promote local economic growth, development and/or poverty reduction, but most export credit agencies do not have a development mandate at all. Their singular purpose is to promote their own countries' exports or foreign investments.

III. Export credit agencies and sovereign debt

11. Export credit agency-related debt constitutes the largest component of developing country debt. According to the World Bank, export credit agencies' total exposure to developing countries had reached an estimated $500 billion by the end of 2000, one quarter of those countries' total long-term external debt.[12] A number of

[10] Keenan, "Export credit agencies and the international law of human rights" (see footnote 2), p. 2.

[11] Aaron Goldzimer, "Worse than the World Bank? Export credit agencies — the secret engine of globalization", *Backgrounder*, vol. 9, No. 1 (Winter 2003), p. 2.

[12] World Bank, *Global Development Finance: Financing the Poorest Countries* (Washington, D.C., 2002), p. 107.

countries owe more than 50 per cent of their total debt to export credit agencies. According to 2001 figures from OECD, for example, around 64 per cent of the debt of Nigeria and 42 per cent of the debt of the Democratic Republic of Congo were owed to export credit agencies.

12. There are various ways in which export credits can contribute to a country's sovereign debt. Export credit agencies can directly contribute to the sovereign debt burden when they lend to a Government or foreign public entity, or when they guarantee or insure commercial credits made available to a Government or public entity. If the debtor (the public entity) defaults on its payments to the export credit agency or to the creditor insured by the agency, the debt owed by the public entity becomes part of the country's sovereign debt.

13. Export credits may also generate sovereign debt indirectly through sovereign counterguarantees. These guarantees seek to reduce the risks of transactions between a private investor (an exporter or provider of services, often from a developed country) and a foreign private recipient (an importer or recipient of an investment or project, often from a developing country). The exporter takes up insurance with its home country's export credit agency for a transaction or project with considerable economic or political risk. In turn, the export credit agency requires a counterguarantee from the recipient's Government. In the event of default or failure of the project, the export credit agency pays the private company for its loss and seeks reimbursement for its costs from the developing country Government against its counterguarantee. If the Government is unable to pay the counterguarantee, the amount owed is added to the country's sovereign debt. The inherent financial or political risk of the transaction is thus transferred from the private investor to the taxpayers of the country of the private recipient.

14. Another way is when export credit agency projects involve Governments in large contingent liabilities even in circumstances where they do not borrow or guarantee a loan. Developing country Governments often have to offer extraordinarily generous terms to attract certain private investments such as those for power projects. The Government may have to sign a power purchase agreement guaranteeing the purchase of power at high dollar-denominated prices. Since such a purchase agreement is not a loan, it is not counted as debt, although it may have massive budgetary implications for the Government concerned.

15. Inevitably, export credit agency backing reduces the pressure on investors to exercise due diligence in assessing the risk of default or failure of a project. Irresponsible investing and export credit agency backing can therefore contribute to an increase in the debt of developing countries.

16. Governments that are unable to meet their debt obligations often need to reschedule their debt repayments in international forums, such as the Paris Club. For the least developed countries, export credit-related debt is often not included in negotiations on debt relief or cancellation. Currently, all export credit debt that is cancelled after debt rescheduling agreements in the Paris Club may be reported as official development assistance. Thus, the cancellation of export credit agency debts is often funded by official aid budgets. However, transactions that result in export credit debt do not necessarily serve development purposes; export credits typically support environmentally and socially harmful projects.

17. Civil society organizations have expressed concern that some of the debt emanating from export credit agency transactions with developing countries may be odious or illegitimate (see A/64/289) and should therefore be cancelled. The independent expert shares this concern and urges debtor countries to conduct transparent public audits of all export credit agency debt in order to ascertain its nature. In keeping with the principle of shared responsibility of creditors and debtors for preventing and resolving unsustainable debt situations, as underscored in the Monterrey Consensus of the International Conference on Financing for Development, he also calls upon the home States of export credit agencies to undertake transparent public audits of the lending portfolios of their agencies.

IV. Export credit agencies and human rights

A. Human rights obligations of export credit agencies

18. States bear primary responsibility for the realization of human rights. In this regard, they have three essential duties: to respect, protect and fulfil the human rights of individuals or groups within their territory or jurisdiction. The duty to protect entails taking measures to ensure at all times that third parties do not violate human rights. Thus, States must take appropriate steps to prevent, investigate, punish and redress human rights abuses by third parties through effective policies, legislation, regulation and adjudication (see A/HRC/17/31, annex, principle 1).

19. It is increasingly recognized that States' human rights obligations can extend beyond borders in certain circumstances. For example, the Committee on Economic, Social and Cultural Rights has underscored the legal obligations of States to respect economic, social and cultural rights beyond their jurisdiction and to avoid actions that have the effect of undermining them. In its general comment No. 14, the Committee has stated that to comply with their international obligations, States parties have to respect the enjoyment of the right to health in other countries and to prevent third parties from violating that right in other countries, if they are able to influence these third parties by way of legal or political means, in accordance with the Charter of the United Nations and applicable international law (E/C.12/2000/4, para. 39).[13] In a similar vein, the Human Rights Committee, in its general comment No. 31, has stated that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State party, even if not situated within its territory (CCPR/C/21/Rev.1/Add.13, para. 10).[14]

20. Thus, a State whose actions undermine human rights abroad or whose failure to regulate national actors results in violations in other countries is liable in respect of those violations.[15] In addition, under article 2.1 of the International Covenant on

[13] See also general comment No. 12 on the right to adequate food, paras. 36 and 37; and general comment No. 15 on the right to water, paras. 31-34.

[14] See also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136.

[15] Some treaty bodies have urged States parties to take steps to prevent companies under their jurisdiction from committing abuses abroad. See, for example, general comment No. 19 of the Committee on Economic, Social and Cultural Rights on the right to social security (E/C.12/GC/19), para. 54, and the Concluding Observations of the Committee on the Elimination of Racial Discrimination on the fourth, fifth and sixth periodic reports of the United States (CERD/C/USA/CO/6).

Economic, Social and Cultural Rights, States have an obligation to provide international assistance and cooperation with a view to achieving progressively the realization of the rights elaborated in the Covenant.

21. While the State where an export credit agency-backed project is implemented bears primary responsibility for the protection of human rights of the local population, the agencies' home States are responsible for the regulation and supervision of the activities carried out by their national export credit agencies (whether owned, mandated or regulated by Government) that had an adverse effect on the enjoyment of human rights of the population of the host State. As stated by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, States should take steps to protect against human rights abuses by business enterprises that are owned or controlled by the State or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence (A/HRC/17/31, annex, principle 4).

22. However, Governments rarely exercise due diligence concerning the actions of their national export credit agencies. Indeed, the agencies' operational policies and the national laws establishing them typically never include references to human rights standards. Neither do export credit agencies have in place a clear policy on the prevention of human rights abuses or on due diligence to identify potential harmful effects of projects on human rights and to mitigate them. Many export credit agencies' home States also lack effective mechanisms to adjudicate claims of human rights abuses resulting from projects backed by such agencies.[16] Moreover, impact assessments of human rights violations of export credit agency-backed operations are rarely undertaken. In addition, all transactions and projects supported by export credit agencies are often protected by confidentiality provisions that prevent their publication among the population and the potentially affected communities, thus undermining the human rights principles of transparency and participation.

23. As explained above, export credit agency-supported activities can have serious consequences on a country's debt burden and sustainable development and, consequently, on the lives of people. States should therefore ensure that the projects that they support through their export credit agencies do not result in or contribute to human rights abuses. When a Government, directly or through its export credit agency, fails to exercise due diligence to protect human rights from the potentially harmful behaviour of non-State actors, it is in breach of its obligations under international human rights law.

24. For export credit agencies to operate with due diligence, they should carry out and publicize human rights impact assessments, in consultation with the potentially affected population, before deciding to support any project. They should also continue to conduct independent monitoring throughout the life of the project and

[16] In the United States, the Overseas Private Investment Corporation, which operates as an export credit agency, has established an Office of Accountability to assess and review complaints about the projects that it supports. The Office offers local communities, which may be materially, directly or adversely affected by a project, and project sponsors, a means of raising complaints, independently from the Corporation's operations. See www.opic.gov/doing-business/accountability.

reassess the human rights risks. To ensure that potential victims receive adequate attention and redress, export credit agencies should put in place an independent, fair and non-discriminatory grievance mechanism. National legislation establishing export credit agencies and their operational policies should also refer to human rights standards. Export credit agencies should assess all projects against human rights standards and establish clear due diligence requirements in their policies and contracts with clients.

25. Private corporations that are financially supported by export credit agencies also bear responsibility for the human rights impact of their activities. It is noteworthy in this regard that the Human Rights Council, in its resolution 8/7, underscores the responsibility of transnational corporations and other business enterprises to respect all human rights (see also Human Rights Council resolution 17/4). It is also notable that the Committee on Economic, Social and Cultural Rights has stressed that national and transnational private actors should pursue their activities within the framework of a code of conduct conducive to the respect of those rights (E/C.12/1999/5, para. 20).

26. Private corporations have a responsibility to the community to ensure that their activities do not violate human rights, either directly or through complicit association with abusers, and to seek to prevent or mitigate adverse human rights impacts (A/HRC/17/31, annex, principle 13). It is notable that the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises has stressed that, in addition to compliance with national laws, corporations have a basic responsibility to respect human rights, as this is the basic expectation that society has of business (see A/HRC/11/13).

27. Such responsibility requires a policy commitment to comply with human rights standards grounded in core international human rights instruments, specific human rights due diligence and the provision of grievance mechanisms to victims of human rights abuses. Corporate due diligence should entail a number of steps that companies must take to become aware of, prevent, mitigate and address adverse human rights impacts. To conduct their businesses with due diligence, companies must consider the context in which they operate; the impact of their activities, by conducting human rights impact assessments; and the behaviour of the relationships connected to those activities, to avoid complicity in human rights abuses (A/HRC/17/31, annex, principle 17). They should also engage with potentially affected communities through continuous consultation and the provision of information.

28. When abuses have already taken place, grievance mechanisms should be provided to the victims. The Special Representative has emphasized that access to remedies plays an important role in corporate responsibility to respect human rights. Corporations should establish grievance mechanisms such as hotlines for raising complaints, advisory services for victims and expert mediators.

B. Impact of export credit agency activities on human rights

29. Although it is difficult to obtain accurate information on export credit agency-backed projects owing to the secretive manner in which most of the agencies operate, numerous reports have documented the harmful impact of those projects on human rights. According to the reports, corporate activities supported by export credit agencies have on numerous occasions resulted in human rights violations,

such as harassment of ethnic minorities, occupation of indigenous land, forced evictions and resettlement, lack of compensation, destruction of rural livelihoods, violations of labour rights, threats to life and bodily integrity, increased militarization, State repression, exclusion of women from consultation, restrictions on freedom of expression and association, insufficient participation of and consultation with people affected by the project and restrictions on access to justice.[17]

C. Other concerns

30. The activities supported by export credit agencies have also given rise to concerns about the lack of transparency and accountability. Most such agencies have resisted calls by civil society organizations to publish information, claiming that they are exempt from transparency requirements owing to the commercial and international sensitivity of their activities and the confidentiality rule that protects them.

31. Although the availability of information on their operations varies from country to country, export credit agencies lag behind the transparency and accountability mechanisms of other public agencies. This undermines any attempts to ensure that the agencies provide responsible credit, behave with due diligence and respect human rights and environmental standards. Indeed, most of them are not obliged to disclose information about the potential adverse social and environmental impact of the projects that they support. Some agencies release the relevant information only after the transaction has been approved and subject to authorization from the client.

32. The lack of transparency and accountability of export credit agency operations puts home Governments and, indirectly, their taxpayers, at risk of complicity in supporting projects that may result in human rights violations, connivance with corrupt practices, involvement in the activities of unaccountable regimes and environmental degradation. As public or semi-public entities, export credit agencies have a responsibility to inform taxpayers of any such risks.

33. Reports by civil society organizations indicate that projects supported by export credit agencies are known to have been implicated in corruption cases. According to Transparency International, bribing foreign officials in order to secure contracts for their exports has become a widespread practice in industrialized countries.[18] The bribes are treated as commissions and are included in the contract value covered by the guarantee or in the indemnification of the exporter where insurances come into play.[18]

34. Export credit agency-backed projects are also known to have supported the activities of unaccountable regimes. For example, loans and guarantees were

[17] See, for instance, Watson, ed., *Race to the Bottom, Take 11* (see footnote 7) and Norlen et al., *Unusual Suspects* (see footnote 1).

[18] Dieter Frisch, "Export credit insurance and the fight against international corruption", Transparency International Working Paper (Transparency International, 1999). Available from www.odiousdebts.org/odiousdebts/index.cfm?DSP=content&ContentID=2366. On insufficient progress in tackling corporate involvement in bribery and corruption, see also Transparency International, *Transparency in Reporting on Anti-Corruption: A Report on Corporate Practices* (2009).

provided by the Export-Import Bank of the United States for the Bataan Nuclear Power Plant project during the Ferdinand Marcos regime in the Philippines. The German export credit agency provided insurance to support a deal with Indonesia, during the Suharto regime, to purchase and modernize German vessels, which were eventually used in internal armed conflict in Indonesia.[19] Similarly, the Export Credits Guarantee Department of the United Kingdom of Great Britain and Northern Ireland agreed to underwrite a guarantee on the sale of Hawk fighter jets to the Indonesian Air Force during the Suharto regime in 1993 and 1996. The jets were reported to have been used by the Indonesian military against villages in East Timor in 1999.[20]

35. The provision of export credit agency loans and guarantees for extractive industry projects such as logging, mining, gas or oil can take an enormous toll on the environment of the region where the project is implemented and on the lives of their communities. They risk creating environmental degradation; land, air and water pollution; destruction of habitats; greenhouse gas emissions, deforestation, desertification and soil degradation; long-term fossil fuel dependence; and ultimately, global climate change. In turn, these environmental changes may affect the health of the local population, increasing the risk of cancer, skin and pulmonary disease and other health-related problems. They may also affect people's access to sources of livelihood, reducing their food security, and result in the displacement of local communities, particularly of indigenous peoples, from their traditional homelands.

36. As stated above, export credit agencies play an important role in the global economy. This role entails an additional responsibility for agencies supporting projects in developing countries to conduct their businesses with transparency, accountability and due diligence and in strict compliance with internationally agreed standards on human rights and environmental issues. It is regrettable that as public finance bodies supporting projects in developing countries, most export credit agencies have no development mandate and their sole mission is to promote investments and exports of private corporations, often to the detriment of human rights and sustainable development in the countries where they support projects.[21]

37. As intimated in his report on his mission to Australia (A/HRC/17/37/Add.1), the independent expert fully supports the view that the absence of transparency requirements raises serious questions about the accountability of export credit agencies to the taxpayers of their home States and to citizens of the developing countries where they support projects. Loans underwritten by an export credit agency's home Government or guaranteed by the Governments of the countries where export credit agency-supported projects are being implemented are matters of public concern. It is therefore reasonable to expect a public body or a publicly funded body to abide by transparency requirements and operate with clear accountability mechanisms.

38. The independent expert is of the view that export credit agencies should be required to publicly disclose information concerning their activities, including

[19] See European Network on Debt and Development, "Skeletons in the cupboard: illegitimate debt claims of the G7" (2007).

[20] Hildyard, "Snouts in the trough" (see footnote 7).

[21] Jubilee Australia, *Risky Business: Shining a Spotlight on Australia's Export Credit Agency* (Sydney, Australia, 2009), p. 10.

project assessment, decision-making and implementation, and to undertake assessments of the human rights impact of their financing decisions, in addition to environmental and social impact assessments. Any limitations to the disclosure of information should be clearly and narrowly defined. This would allow export credit agencies to make responsible and informed decisions about the projects they support.

39. Besides the adoption of transparency and accountability mechanisms as part of agencies' policies and procedures, State entities such as national legislatures or national audit offices have a responsibility to undertake ongoing monitoring of the activities of export credit agencies to ensure that their activities do not undermine their country's foreign aid and development policies or their international human rights obligations. These human rights concerns require further investigation.

V. International regulation of export credit agency activities

40. Within OECD, export credit agencies are governed through the Arrangement on Officially Supported Export Credits. The Arrangement establishes a legal and financial framework for export credit provision, with the aim of bringing discipline and transparency to export credit operations. The Arrangement focuses mainly on such issues as minimum interest rates and down payments, standardized repayment schedules, common reporting procedures, maximum duration of credits and discipline and transparency in the use of tied aid.

41. In addition, the OECD Working Party on Export Credits and Credit Guarantees (Export Credit Group) provides a forum for the discussion of non-fiscal issues, such as corruption, environment and competition, the negotiation of non-binding common guiding principles and improved cooperation among competitors.

42. International cooperation on export credit policy is also undertaken by the International Union of Credit and Investment Insurers, known as the Berne Union. However, its role is limited to exchanging information on foreign buyers to reduce commercial risk. The Berne Union gathers together export credit agencies not only from OECD countries but also from some emerging economies. It also includes private entities providing export credits and investment insurance without a public mandate. The guiding principles of the Berne Union, which apply to all members, contain vague references to such issues as environmental sensitivity, combating of corruption and promotion of transparency.

43. Most OECD export credit agencies have adopted policies regarding the environmental and social impact of their activities. Such policies typically require environmental impact assessments.

44. In 2003, OECD adopted the Export Credit Group's recommendation on common approaches on environment and officially supported export credits, known as the Common Approaches. The Common Approaches require Governments and export credit agencies to review projects for their potential environmental impact and to evaluate them against international standards. After a review in June 2007, OECD updated the recommendation on the Common Approaches, calling for more public disclosure of information and increased exchange of information to promote a level playing field among agencies. The rules also require compliance with environmental standards in the host country, the screening and classification of

potential environmental impact and the carrying out of environmental impact assessments for projects with potential significant adverse environmental impact, as well as the screening of projects against the World Bank safeguard policies or, where appropriate, the International Finance Corporation performance standards.

45. However, the Common Approaches have a number of drawbacks. First, they are a non-binding recommendation. Second, they contain a derogation clause (article 13) that allows member export credit agencies, should they so decide, to opt out of applying any standards at all, provided they report and justify this to the Export Credit Group.[22] Third, the Common Approaches currently apply only to officially supported export credits with a repayment term of two years or more.

46. It is notable that the Common Approaches make no reference to human rights, which has prompted the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises to recommend that the Common Approaches clearly acknowledge that human rights are a critical element in the social sustainability of enterprises and markets and explicitly recognize the export credit agencies' role in fostering corporate responsibility to respect human rights.[23] The Special Representative has further suggested that OECD consider building export credit agency capacity on human rights by establishing a human rights working group to develop tools suitable for export credit agencies in undertaking human rights due diligence and help build in knowledge base and competency.[23] In addition, Amnesty International has recommended that export credit agency-supported projects be assessed against international human rights standards in order to prevent projects from causing or contributing to human rights violations.[24] The independent expert fully supports these recommendations.

47. With regard to corruption, in 2000, the Export Credit Group issued an action statement on bribery and officially supported export credits, which was revised in 2006 and later converted into an OECD recommendation. The recommendation recognizes the role of export credit agencies in combating corruption and recommends appropriate measures to deter bribery in their international operations, including informing exporters requesting credit about the legal consequences of bribery, requesting a declaration that the exporters have not been engaged in bribery, requesting information on past corruption charges, requiring the disclosure of information on agents' fees and commissions, checking the record of potential clients on the debarment lists of international financial institutions and suspending a project where there is evidence of bribery.[25]

[22] Wainwright, ed., *Exporting Destruction* (see footnote 3), p. 12. See also http://www.oekb.at/en/export-services/transparency-compliance/environment/oecd-common-approaches/pages/default.aspx.

[23] Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, "Engaging export credit agencies in respecting human rights", statement at the OECD Export Credit Group Common Approaches Meeting, Paris, 23 June 2010.

[24] See the submission of Amnesty International on the review of the revised recommendation on the common approaches (see footnote 7), p. 4.

[25] Wainwright, ed., *Exporting Destruction* (see footnote 3), p. 15.

48. Despite these limited efforts, the operations of export credit agencies continue to be largely unregulated at the global level, and standards on and regulation of transparency and environmental and human rights effects are largely insufficient.

VI. State responsibility for the wrongful acts of export credit agencies

49. As officially supported agencies, export credit agencies can be distinguished from purely private financial corporations. Whether Government-owned or Government-mandated, they perform their functions under national laws or regulations that prescribe their mandates. All export credit agencies carry out some transactions on their Government's behalf, with its support and under its control. This establishes a legal nexus between the State and the agency.[26] Private-public consortia of export credit agencies are also controlled by the State through the authorization, funding and regulation of their operations. As a consequence of this legal nexus, it can be argued that any violation of international law committed by an export credit agency triggers the responsibility of its home State and the wrongful act committed by the export credit agency will be attributable to that State.

50. To support this view, it is worth recalling that according to articles 4 and 5 of the International Law Commission's draft articles on Responsibility of States for internationally wrongful acts, the conduct of any organ of the State, whatever functions or position it holds, and of any non-State organ empowered by the law of that State to exercise certain Governmental authority and acting in that capacity in the particular instance will be attributable to that State under international law. Moreover, for the purposes of international responsibility and in line with the principle of unity of the State, the acts or omissions of any unit of the State can be regarded as an act of the State (A/56/10). This means that the wrongful actions and omissions of export credit agencies that are organs of the State are attributable to the State under the international law of State responsibility. Export credit agencies established as State agencies or Government departments are clearly public authorities, and as such the State bears responsibility for their actions. They are wholly owned by the State and operate under its control. Similarly, export credit agencies established as autonomous corporations owned by the State may be independently managed, but their activities are ultimately overseen by a Government department such as the ministry of trade or finance. Accordingly, this second category of export credit agencies may also be considered as being under State control. Although private companies or private-public consortia belonging to the third category possess more autonomy, the State retains some control over their operations through regulation, funding, approval of large disbursements, oversight or the establishment of standards and procedures. In many cases, ultimate decisions regarding the operations of private or public-private corporations require the approval of a ministry or ministerial committee. Overall, the implication of the State in the activities of export credit agencies is a common factor and cannot be taken too lightly.

[26] See Özgür Can and Sara L. Seck, "The legal obligations with respect to human rights and export credit agencies", paper prepared for ECA Watch, Halifax Initiative and ESCR-Net, July 2006. Available from www.halifaxinitiative.org/updir/ECAHRlegalFINAL.pdf.

51. In line with the law of State responsibility, Governments must ensure that national export credit agencies do not violate international legal obligations, including international human rights law. Where an export credit agency does not consider or take steps to mitigate the human rights impact of the projects of private companies they support, they risk triggering the responsibility of the State for violating international law obligations should abuses occur (A/HRC/17/31, annex, principle 4). States' duty under international law also requires them to ensure that their actions or those of their organs, including export credit agencies, do not cause harm to another State.

52. A State also bears international responsibility for complicity in the wrongful acts of another State if it had knowledge of the circumstances of the wrongful act (A/56/10, article 16). Accordingly, if an export credit agency supports the project of a corporation in a country that allows the corporation to operate in violation of international human rights law, the home State could be responsible for assisting the wrongful act of the host State.[27]

53. The commentary on part one, chapter II, of the draft articles stresses that a State may be responsible for the effects of the conduct of private parties if it failed to take necessary measures to prevent those effects (A/56/10). As mentioned above, under international human rights law, States have a duty to regulate the activities of third parties to protect against human rights abuses. Similarly, in the context of the responsibility of transnational corporate activities, States are under the obligation to protect against human rights abuses of home corporations in foreign countries.[28]

VII. Conclusions and recommendations

54. **Projects supported by export credit agencies can have an adverse impact on sustainable development and human rights in the countries in which they are implemented. Often, export credit agencies lack transparency and do not adequately incorporate environmental, social and human rights considerations into their funding decisions. Under the international law of State responsibility, officially supported export credit agencies are organs or agents of the home State, and their wrongful acts or omissions may be attributable to that State. As such, home States are under an obligation to regulate their activities. In addition, export credit agencies have a responsibility to respect human rights.**

55. **In order to ensure that export credit agency-supported activities do not undermine international human rights obligations, contribute to violations of human rights, hamper sustainable development in the countries in which they are being undertaken or contribute to the debt burdens of developing countries, the independent expert recommends that:**

(a) **States adopt measures to ensure that their export credit agencies adopt and implement stronger environmental and social safeguards that are consistent with international human rights standards;**

[27] See Keenan, "Export credit agencies and the international law of human rights" (see footnote 2), pp. 3-7. See also Can and Seck, "The legal obligations with respect to human rights and export credit agencies", pp. 4-8.

[28] See Keenan, "Export credit agencies and the international law of human rights", p. 10; Can and Seck, "The legal obligations with respect to human rights and export credit agencies", p. 12.

(b) States ensure that their export credit agencies improve transparency and accountability by implementing disclosure policies that require, inter alia, public disclosure of all information on the environmental, social, human rights and development impact of agency-supported transactions and that such information is made accessible to the affected communities;

(c) States take measures, including adopting legislation, to ensure that their export credit agencies do not support projects that cause or contribute to human rights violations, and in this regard, that they ensure that their export credit agencies discharge their obligation to respect human rights by adopting a human rights due diligence framework through which they can assess the actual and potential negative human rights impact and address risks effectively;

(d) States ensure access to effective national legal remedies for those affected by export credit agency-supported projects and exports, including the victims of human rights violations arising from export credit agency-supported activities;

(e) The implementation of the OECD Common Approaches in environmental, social and human rights screening policies of export credit agencies become mandatory;

(f) The international community adopt a moratorium on the repayment of current export credit agency debt for the poorest countries, much of which has been incurred for economically unproductive purposes, debtor countries conduct transparent public audits of all export credit agency claims to determine their legitimacy in conformity with the odious debts doctrine, and all debt found to be contrary to the doctrine be unconditionally cancelled.

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Item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Human rights and unilateral coercive measures

Annual report of the Secretary-General

Summary

The present report is submitted in accordance with General Assembly resolution 65/217, in which the Assembly requested the Secretary-General to bring the resolution to the attention of all Member States, to continue to collect their views and information on the implications and negative effects of unilateral coercive measures on their populations and to submit an analytical report thereon to the Assembly at its sixty-sixth session. The Office of the United Nations High Commissioner for Human Rights has received replies from the Governments of Argentina, Belarus, Bosnia and Herzegovina, Burkina Faso, Cuba, Dominican Republic, Ecuador, Guatemala, Guyana, Iraq and Kuwait in response to a note verbale sent out by the Office. The present report comprises a summary of all responses received and an analysis of their contents.

* A/66/150.

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I. Introduction

1. In paragraph 15 of its resolution 65/217, the General Assembly requested the Secretary-General to bring the resolution to the attention of all Member States, to continue to collect their views and information on the implications and negative effects of unilateral coercive measures on their populations and to submit an analytical report thereon to the Assembly at its sixty-sixth session, while reiterating the need to highlight the practical and preventive measures in this regard.

2. On 5 May 2011, in accordance with paragraph 15 of resolution 65/217, the Office of the United Nations High Commissioner for Human Rights sent a request for information to all permanent missions to the United Nations Office at Geneva. As at 25 July 2011, the Office had received responses from the Governments of Argentina, Belarus, Bosnia and Herzegovina, Burkina Faso, Cuba, Dominican Republic, Ecuador, Guatemala, Guyana, Iraq and Kuwait.

II. Information received from Member States

Argentina

[Original: Spanish]
[1 July 2011]

The Republic of Argentina has consistently supported the resolutions on human rights and unilateral coercive measures in the General Assembly and the Human Rights Council. It also voted for General Assembly resolution 55/6 on the suppression of the use of unilateral measures as coercive political and economic instruments.

The Argentine position is based on the obligation of all States to refrain from adopting or applying unilateral measures that oppose international law or the Charter of the United Nations. It is also based on the annex to General Assembly resolution 2625 (XXV) and the Charter of Economic Rights and Duties of States contained in General Assembly resolution 3281 (XXIX). The use of unilateral coercive measures with extraterritorial effects seriously affects trade and economic cooperation and has a negative impact on the free movement of capital and the freedom of trade. Argentina believes that the adoption of coercive measures that deny people access to basic health care and food prevents the enjoyment of fundamental human rights, which cannot be violated on the rationale of national security interests.

Argentine Act 24.871 states that any foreign law that limits or prevents free trade and free movement of capital, goods or people, directly or indirectly, adversely affecting any country or group of countries, will not be applicable and will not have any legal effect within the territory of Argentina. Article 1 of this Act states that foreign laws intended to generate extraterritorial legal effects by imposing economic sanctions, or by limiting investments in another country, with the objective of changing its government will not have any legal effect within the territory of the Republic. Argentina reaffirms the indivisible, universal and interdependent nature of all human rights.

Belarus

[Original: Russian]
[23 June 2011]

The response of the Republic of Belarus refers to the continued restrictive measures of a political and economic nature by the European Union and the United States of America in relation to Belarus. In 2011, the European Council imposed visa and financial sanctions against several officials of the Republic on the grounds of falsification of the Presidential elections of 19 December 2010 and subsequent violent persecution of the democratic opposition, civil society and members of the independent mass media. As at 20 June 2011, the number of Belorussian citizens subject to sanctions on travel to the territory of the States members of the European Union reached 190. In addition, the European Union imposed economic sanctions against three Belorussian enterprises, namely, Beltekexporta, BT-Telekommunikazi and Sport-pari. Albania, Bosnia and Herzegovina, Croatia, Iceland, Liechtenstein, the former Yugoslav Republic of Macedonia, Montenegro, Norway and Serbia also joined the European Union sanctions against Belarus.

Since June 2006, the United States has imposed sanctions against officials of Belorussia affecting their property interests in United States territory. Since August 2007, United States visa restrictions have been applied against several categories of officials. During the period 2004-2011, a number of unilateral restrictive measures of an economic nature were applied by the United States of America against major Belorussian enterprises, including Belneftexim, BelTekExport, Belorusneft and Integral. The decisions of the European Union and the United States of America as well as the countries supporting their unilateral coercive measures in the form of sanctions directly affect the interests of ordinary Belorussian citizens and their enjoyment of economic, social and other rights, including the right to development. Such measures also affect the activities of Belorussian civil society, including journalists. Courts are under pressure from sanctions, which is not acceptable from the standpoint of preserving the independence of the judiciary and upholding rights.

Belarus is obliged to draw the attention of the General Assembly and the Human Rights Council to the unilateral coercive measures applied by the European Union, the United States of America and other countries, in violation of, inter alia, General Assembly resolution 65/217 and Human Rights Council resolution 15/24 on "Human rights and unilateral coercive measures". It recalls that according to the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, and the relevant principles and provisions contained in the Charter of Economic Rights and Duties of States, proclaimed by the General Assembly in its resolution 3281 (XXIX) of 12 December 1974, in particular article 32 thereof, no State may use or encourage the use of economic, political or any other type of measure to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it, advantages of any kind.

The Republic of Belarus welcomes the continued attention of the General Assembly and the Human Rights Council to the question of the realization of human rights in the context of unilateral coercive measures and is convinced of the need to set up in the Council a special procedure on unilateral coercive measures and their impact on human rights. Belarus supports the request contained in Human Rights

Council resolution 15/24 that the Office of the United Nations High Commissioner for Human Rights prepare a thematic study on the impact of unilateral coercive measures on the enjoyment of human rights, including recommendations on actions aimed at ending such measures.

Bosnia and Herzegovina

[Original: English]
[29 June 2011]

Bosnia and Herzegovina, as a sovereign, independent and internationally recognized country, is deeply convinced that no State should use or encourage other international actors to use economic, political or any other type of measures to coerce other States in order to make them subordinate to the State or to great power. Bosnia and Herzegovina takes this position because unilateral coercive measures are in direct contradiction to the standards of public international law and humanitarian law and therefore constitute a flagrant violation of international instruments signed and ratified by internationally recognized entities/member States of families of international organizations of the United Nations, the Council of Europe, the European Union and the like.

Human rights are interrelated and interdependent, and this means that they include as a fundamental human right the right to development through the support of free trade and the movement of people, goods, capital and services. The principle of free passage, or "laissez passer", was conceived in the times of the French revolution and is built into the foundations of the European Union. Bosnia and Herzegovina believes that restricting the right to development through the use of unilateral coercive measures greatly jeopardizes the human rights enshrined, in the first place, in the European Convention on Human Rights and Fundamental Freedoms, the Universal Declaration of Human Rights and numerous international instruments that it has signed and ratified.

Interference with free trade takes place at the expense of vulnerable populations in developing countries, including children, adolescents, women and the elderly. Unfortunately, legislative, economic and political unilateral coercive measures continue to prevail worldwide, significantly influencing the social situation in developing countries and the full exercise of human rights. In the light of the above, Bosnia and Herzegovina is of the view that it is necessary to raise public awareness of the negative impact of unilateral coercive measures and the importance of respecting the standards and principles of both public and private international law in order to create friendly relations between countries and promote and protect human rights.

Bosnia and Herzegovina strongly supports the implementation of the Declaration on the Right to Development and invokes the principle under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights that no person shall be deprived of their own means of subsistence. Unilateral coercive measures are one-sided means of political force that directly conflict with the ideals of democratic States.

Burkina Faso

[Original: French]
[20 July 2011]

Burkina Faso supports General Assembly resolution 65/217 on "Human rights and unilateral coercive measures" and other documents adopted within the framework of other international bodies to prohibit the adoption of unilateral coercive measures by States. This includes Human Rights Council resolution 15/24 and previous resolutions of the General Assembly and the Human Rights Council on "Human rights and unilateral coercive measures"; the Final Document of the Fourteenth Conference of Heads of State and Government of the Non-Aligned Movement held in Havana in September 2006 and the recommendations of the World Conference on Human Rights held in Vienna in 1993, which all require that States refrain from the use of unilateral measures inconsistent with international law and the Charter of the United Nations.

Burkina Faso remains convinced that to preserve peace and security, States must necessarily seek to promote them through friendly and cooperative relations, based on the principle of equality among nations and their right to self-determination. The development of such relations requires that States refrain from adopting or executing unilateral coercive measures contrary to international law, including through recourse to war, militarism and negative economic and trade measures imposed unilaterally. These unilateral coercive measures are contrary to the fundamental principles of the Charter of the United Nations, the Charter of the African Union, and many other international legal instruments.

Compliance with the rules and principles established by international law, including humanitarian law, are the only means to establish international relations that are peaceful and respectful of human rights. State sovereignty and non-intervention in the internal affairs of other States are fundamental principles embodied in the Charter of the United Nations which should guide relations among States. In the view of Burkina Faso, in the current international context marked by divergence of State interests, but also by the development of multilateral frameworks for dialogue between States, the challenges in international relations must necessarily be addressed within these frameworks. The mechanisms established under the United Nations, including the Security Council, and other international and regional multilateral organizations are the only legitimate authorities to decide on appropriate measures to safeguard security and to encourage a State to comply with international standards. All coercive measures adopted unilaterally by one State against another, regardless of the purpose, are contrary to international law and should therefore be prohibited.

The resort to direct or indirect war or armed force by one State against another always causes disastrous effects, for both human rights and the development of nations. All States should seek at all costs to resolve their differences through the mechanisms of peaceful resolution of disputes recognized by international law. As a peace-loving country, Burkina Faso has always tried to promote healthy relationships and friendships with other States. It is this spirit of peace that led to the active involvement of the Head of State of Burkina Faso in conflict resolution in the subregion, including in Côte d'Ivoire and Togo.

Burkina Faso, as a Member State of the United Nations, the African Union and many other international and regional organizations, attaches great importance to multilateralism in international relations, as is evidenced by its active participation in various regional and international frameworks. Burkina Faso is a member of the Human Rights Council. The multilateral frameworks are appropriate and legitimate for the resolution of challenges encountered in inter-State relations and issues that may threaten international peace and security. Burkina Faso upholds the rule of law and is committed to the principle of equality, both nationally and internationally. In accordance with the standards and principles of international law, Burkina Faso has not adopted unilateral coercive measures against any other State.

From the perspective of the law in Burkina Faso, international standards have primacy over internal legislative and administrative measures. Under Article 151 of the Constitution of Burkina Faso, its international obligations, particularly in the context of agreements duly ratified, supersede national laws. Therefore, measures that are contrary to the Charter of the United Nations and the international standards and principles to which Burkina Faso has agreed are prohibited by law. The authorities of Burkina Faso, committed to the core values that guide international relations, are willing to cooperate with other States and international bodies for the development of friendly relations and cooperation in the world.

Cuba

[Original: Spanish]
[26 May 2011]

Cuba points out that numerous resolutions of the General Assembly, the Human Rights Council and the former Commission on Human Rights, as well as political declarations approved at major international summits and conferences of the United Nations, have ruled that the application of unilateral coercive economic measures is a violation of the Charter of the United Nations and of international law. The implementation of unilateral coercive measures as an instrument of political and economic coercion threatens the enjoyment of all human rights, beginning with the right to life, as well as the independence, sovereignty and right to self-determination of peoples. The main victims of those measures are the people of the countries against which they are applied, especially the most vulnerable groups — children, women, the elderly and persons with disabilities.

Cuba recalls that the General Assembly decided in 1970 that no State may use or encourage the use of economic, political or any other measures to coerce another State in order to obtain the subordination of the exercise of its sovereign rights or to obtain from it advantages of any kind. This was endorsed by the Declaration on the Principles of International Law concerning Friendly Relations and Cooperation between States.

Cuba indicates that it has been a victim for over 50 years of the application of unilateral coercive measures and that it therefore attaches particular importance to the consideration of this matter by the Human Rights Council and the General Assembly. Cuba believes that the application of such measures has been a fundamental instrument of a policy of hostility and aggression of the United States of America against Cuba, seeking to destroy the political, economic and social system established by the sovereign will of the Cuban people. Cuba believes that the

economic, commercial and financial embargo imposed by the United States against Cuba is the "longest and most cruel system of unilateral sanctions which has been applied against any country or witnessed by the history of humankind". The purpose of the economic, commercial and financial embargo was the destruction of the Cuban revolution, as laid down on 6 April 1960.

Cuba maintains that the embargo constitutes an essential component of a policy of State terrorism deployed against Cuba by successive American administrations which, in a systematic, cumulative and inhumane way, has affected all Cuban people, regardless of age, sex, race, religion or social status. The Cuban submission asserts that this policy qualifies as an act of genocide under subsection (c) of Article II of the Geneva Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948.

Cuba refers to the so-called Torricelli Act of 1992 and the Helms-Burton Act of 1996, which, it says, contain provisions that are contrary to the Charter of the United Nations, in violation of international law and World Trade Organization agreements. Through these laws of markedly extraterritorial nature, the United States Government has strengthened and extended to third countries, their companies and citizens, the application of the economic, commercial and financial embargo imposed against Cuba for 50 years.

Cuba has observed that, in an effort to justify the blockade against Cuba and its people, the United States Department of State has included Cuba, without any grounds, in a list elaborated unilaterally of perpetrators of alleged violations of human rights, human trafficking, sex tourism, practices of terrorism, religious intolerance, etc.

Despite a media and diplomatic offensive by the United States Government and the adoption by it of some cosmetic measures, the embargo remains intact today and continues to be applied rigorously, with the political, administrative and repressive mechanisms for its implementation having been strengthened. There has been no action to dismantle the web of laws and administrative regulations/requirements that form the legal basis and regulations of the embargo. On 11 September 2009, the implementation of the embargo against Cuba was extended, based on "the national interest of the United States" and the 1917 Act of Trade with the Enemy, which applies only to situations of war and is valid only for Cuba. Sanctions apply to North American and European companies doing business with Cuba. This policy impedes exchanges of a scientific, cultural or touristic nature and promotes theft of trademarks and the freezing of millions of dollars of Cuban funds in the United States. More pressure is applied to subordinate relations with Cuba for the purposes of "regime change" and financial support is offered for actions aimed at overthrowing the constitutional order in Cuba.

Cuba notes that the application of the embargo is not a bilateral issue only between Cuba and the United States. Repeated extraterritorial application of United States laws and the persecution against the legitimate interests of businesses and citizens of third countries significantly affect the sovereignty of many other States as well. The damages caused by the extraterritorial nature of unilateral coercive measures are multiplied by the important participation of the United States and its enterprises in trade and transnational investment. The investments of both third-country companies in the United States and of North American companies abroad, mainly in the form of mergers and partial or full acquisitions of companies,

exacerbate the extraterritorial effects of these measures, by reducing the external economic space of Cuba and make it more difficult, sometimes impossible, to find partners and suppliers to avoid the strict blockade imposed by the United States.

The Cuban submission states that, according to conservative estimates, the direct damage to Cuba resulting from the blockade until December 2009 exceeds tens of billions of dollars. Despite the approval of the most recent resolution of the General Assembly calling for the lifting of the economic, commercial and financial embargo against Cuba, adopted by an overwhelming majority of Member States on 28 October 2010, and notwithstanding the existence of 18 previous resolutions that include this just demand, the United States Government has continued to pursue this action against Cuba.

The Cuban submission also states that the United States Government has recruited mercenaries to carry out acts against Cuba. In 2009, the Office of Foreign Assets Control fined seven entities for violating the blockade against Cuba in the amount of $315,503. The sum of fines on individuals and entities amounted to $340,678. In the first half of 2010, fines imposed on companies amounted to $2,221,671. The Office of Foreign Assets Control applied other million dollar fines for trade not only with Cuba, but also with other countries under/by virtue of unilateral coercive measures. The entities of third countries subjected to fines included Credit Suisse Bank of Switzerland, Australia and New Zealand Bank Group Ltd. and the subsidiary in Sweden of the chemical company Innospec Inc. based in Delaware. In May 2009, the Office of Foreign Assets Control refused the request of the Banco Popular Español to release funds amounting to €107,770.95 blocked via a transfer from Madrid to Moscow, realized by Cubana de Aviación in December 2008.

The submission continues that, since the acquisition of the Lemery Company of Mexico by the Israeli transnational company Teva with United States capital, Cuba can no longer buy the cytostatic dactinomycin, the most useful drug in the treatment of sarcomas (malignant neoplasm). The use of this product would allow an increase in the survival rate of patients to over 70 per cent of all cases. Sensitive sectors, such as food, health, education and culture, have been among the main targets of this policy, which affects quality of life. The following are examples between May 2009 and April 2010. Cuba has no access to the medicine temozolamide (Temodar), specific cytostatic for use in central nervous system tumours (gliomas and astrocytomas). This affects approximately 250 patients annually, of which about 30 are children. The Pediatric Cardiology Centre "William Soler" is prevented from acquiring devices, such as catheters, coils, guides and stents, used for diagnosis and treatment by interventional catheterization for children with complex congenital heart disease. American companies are prohibited from selling these products to Cuba. Cuban children are denied the use of the American device Amplatzer made of special materials in order to avoid organic rejection/refusal. This device is used in open heart surgery, an intervention, in addition to being risky, that requires intensive care and recovery for three weeks. The Institute of Oncology and Radiobiology of Cuba is prevented from using plates of radioactive iodine in the treatment of retinoblastoma tumour (congenital tumour that grows on the retina) through inability to acquire these plates, which can be purchased only in the United States. In the absence of this technology, which is basically intended for children, the only alternative is the removal of the eye and, in

some cases, the removal of both eyes, a medical method entailing serious limitations for life.

In the food industry, the import company Alimport was affected between May 2009 and April 2010 in the approximate amount of $102,900,000 by the concept of "risk country" in the form of banking and financial costs and costs for the modality of payment instruments. If Cuba had these funds at its disposal, it could have purchased 337,000 tons of wheat, 451,000 tons of maize and 109,000 tons of chicken at 2008 average prices. In the field of education, Cuba has been prevented from acquiring the necessary equipment for 60 therapeutic classrooms for children with motor disabilities since it does not have access to the United States market and has to resort to markets that are more distant and more expensive. The cost of these classrooms is around €14,000 on the European market, but in the United States does not exceed $8,000 dollars.

According to the submission, from May 2008 to May 2010, the total amount of Cuban imports in this sector fell to $18,200,000, of which 10 per cent was spent on freight. If Cuba had access to the United States market, it would have had to devote only 3.7 per cent to pay the freight, so it would have been able to buy offset paper for the printing of all textbooks needed for education (primary, secondary, etc.), all tracing toolkits for teaching mathematics in elementary schools and special education, and 150,000 sets of acrylic board markers for educational purposes around the country in the school year.

Cuba notes that, in the cultural arena, a bilateral agreement was signed in 2002 with the National Social Sciences Research Council of the United States of America, which would support the project for conservation of the house-museum of Ernest Hemingway and supply materials for the scanning of correspondence and documents from the Hemingway collection. However, the Treasury Department did not authorize the transfer to Cuba of the funding necessary to implement this project. These are illustrative examples of laws, regulations and practices that support the embargo and that have remained in force, reinforcing the political, administrative and repressive mechanisms for its effective and deliberate implementation.

The requirement to respect international law applies equally to everyone. Cuba states that it is unacceptable that the Government of the United States of America continues to maintain the embargo, which worsens the living conditions of the Cuban people, and ignores the fact that the international community has been calling for an end to the blockade against Cuba for 19 years in successive resolutions of the General Assembly, while it simultaneously condemns the application of unilateral coercive measures in the Assembly and several of its subsidiary organs.

The application of this policy of blockade continues to be the main obstacle to the economic and social development of Cuba and constitutes a flagrant, massive and systematic violation of human rights and a transgression of the right to peace, and the development and the security of a sovereign State. The continued support of the international community and its strong pronouncement against the application of such measures has been an important tool in the struggle of the Cuban people. It is important that the international community increase the political pressure on the United States Government, calling for an end to this inhumane and obsolete policy, according to the Cuban submission.

Dominican Republic

[Original: Spanish]
[27 June 2011]

General Assembly resolution 65/217 seeks to reaffirm the principles and provisions enshrined in the Charter of the United Nations, previous resolutions of the Human Rights Council and the Commission on Human Rights, as well as norms of international humanitarian law, which establish that unilateral coercive measures and laws applied by a State generate negative consequences, including extraterritorial effects for social and humanitarian activities, as well as for the economic and social development of developing countries. This resolution is a response to multiple calls from Member States of the United Nations with regard to the serious damage that unilateral coercive measures applied by States on other States generate on populations, particularly children, women, the elderly and persons with disabilities, in the Latin American region. The reports presented by Cuba, Mexico and Venezuela are particularly relevant.

The Charter of the United Nations, in force since 24 October 1945, in particular, Article 10, states that "the General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters". The Dominican Republic, as a Member State of the United Nations, does not underestimate the role of the said institution in the overall process of the formation and development of international law.

The commitment of the Dominican Republic to the international community is enshrined in the Constitution of 26 January 2010, in its Article 26, paragraphs 3 and 4, which state: "the international relations of the Dominican Republic are founded and governed by the affirmation and promotion of its national values and interests, the respect for human rights and international law". "On an equal footing with other States, the Dominican Republic accepts an international legal order that ensures respect for fundamental rights to peace, justice, and the political, social, economic and cultural development of nations. It commits to act at the international, regional and national levels in a manner consistent with national interests, peaceful coexistence among peoples and the duty of solidarity with all nations."

Ecuador

[Original: Spanish]
[6 July 2011]

As a sovereign State, Ecuador does not apply unilateral coercive measures which are contrary to international law, the United Nations Charter and the rules and principles that govern peaceful relations between countries and which could prevent the full achievement of the economic and social development of the population, in particular the development of children and women.

Ecuador does not adopt measures that could harm the well-being of its population and prevent it from enjoying human rights. On the contrary, Ecuador

wants to implement measures to improve the living standards and the security level of the population, based on the principles and objectives established in the National Development Plan of Ecuador-National Plan for Well-being. The Government of Ecuador pays special attention to the right of each person to enjoy living standards that provide health and education and the right to food, health care, education and social services. Access to food and medication should not be used as a political tool.

Guatemala

[Original: Spanish]
[8 June 2011]

The response of the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights in Guatemala underlines that the State of Guatemala has duly complied with resolution 65/217 and has not adopted any unilateral coercive measures which would be contrary to international human rights law and the Charter of the United Nations, as well as the principles of a State struggling for the strengthening of democracy and for respect for human rights.

Guyana

[Original: English]
[14 June 2011]

Guyana is both mindful of and agrees with the general considerations outlined in resolution 65/217, particularly article 32 of the Charter of Economic Rights and Duties of States, proclaimed by the General Assembly in its resolution 3281 (XXIX) of 1974, insofar as it condemns use by a State of economic, political or any other type of measure to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights. It shares in the position of the General Assembly that such unilateral coercive measures and legislation are contrary to international law, international humanitarian law and the Charter of the United Nations, which form part of general customary international law and the norms and principles governing peaceful relations among States. Guyana has no legislation or other forms of coercive measures which encourage the use of economic or political coercion. It joins in the condemnation of States which resort to such measures and urges them to effectively reverse such actions.

Guyana reaffirms its commitment to make good-faith efforts to fulfil its international obligations under international instruments to which it has acceded, including the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. After the first free and fair elections in October 1992, following a long struggle for the restoration of democracy, Guyana has focused on the improved well-being and quality of life of its people, and its Parliament has enacted a series of statutes that specifically promote and protect the human rights of individuals as well as vulnerable groups of persons. Guyana, through its Executive, Legislature and Judiciary, collaborates to enhance the implementation of human rights treaties and recognizes the universal, indivisible, interdependent and interrelated character of all human rights.

With regard to the reference in the resolution to "reaffirming the right to development as an integral part of all human rights", Guyana's Constitution, Part 2, Title 1, "Protection of Fundamental Rights and Freedoms of the Individual", Article 149C, states that "no person shall be hindered in the enjoyment of participating through cooperatives, trade unions, civic or socio-economic organizations of a national character, in the management and decision-making processes of the State". Article 14 of the Constitution states that "the goal of economic development includes the objective of creating, promoting and encouraging an economic system capable of achieving and maintaining sustainable competitive advantage in the context of a global competitive environment, by fostering entrepreneurship, individual and group initiative and creativity, and strategic alliances with domestic and global business partners". Guyana shares in the concern about the negative impact of unilateral coercive measures on international relations, trade, investment and cooperation.

As a member of the Caribbean Community (CARICOM), Guyana supports regional integration and consequently the establishment of a Caribbean Single Market and Economy. As a member of the Union of South American Nations (UNASUR) and the Organization of American States, Guyana takes seriously its obligations and commitments to these bodies. There exist claims on Guyana's territory by two neighbouring countries — Suriname and Venezuela. Guyana chose to resolve the issue of its maritime boundaries with Suriname by utilizing the available remedies in the International Law of the Sea and the International Arbitral Tribunal, rather than through coercive measures. Guyana maintains good relations with both these countries and is committed to the United Nations good offices process with regard to the controversy with Venezuela. Guyana, although a small developing country, has reached out to assist States that have faced natural disasters, like Grenada, Haiti, Japan, Saint Vincent, Saint Lucia and Venezuela.

Guyana is gravely concerned about the situation of children who are the main victims of unilateral coercive measures. It recognizes that every child has a right to grow to adulthood in health, peace and dignity and, to this end, has undertaken efforts to ensure the rights of children to health, nutrition, education, and social and emotional development. Similarly, in keeping with the Convention on the Elimination of All Forms of Discrimination against Women and other international standards, Guyana has developed comprehensive constitutional and legislative provisions and policies to promote and protect women's rights. These reforms are important to prohibit the persistence of unilateral coercive measures which have negative implications for social and humanitarian activities and economic and social development of developing countries like Guyana. Guyana remains committed to eradicating all forms of unilateral coercive measures which create obstacles to both development and human rights.

With reference to paragraph 2 of the resolution concerning the right to "food, medical care and education", Guyana places emphasis on the right to food and has taken positive measures to eliminate hunger and promote food security. Guyana ensures that health-care delivery is based on equity and accountability. Its education policy ensures that all citizens, regardless of race, age, creed, physical or mental disability, have opportunities to achieve their full potential through equal access to quality education within available resources. The provision of necessary social services, such as food, medical care, education and social safety nets, "are not used as tools for political pressure".

Guyana is both mindful of and agrees with the principle of self-determination alluded to in paragraphs 4 and 7 of resolution 65/217, under which nations have the right to freely choose their sovereignty and international political status with no external compulsion or interference. Consequently, it shares in the condemnation and rejection of unilateral coercive measures adopted by any State, multilateral or international developmental agency. Guyana reiterates that unilateral coercive measures constitute a major obstacle to the full realization of human rights, development of societies, security and peaceful resolution of conflicts at the regional and global levels.

Iraq

[Original: Arabic]
[22 July 2011]

The Republic of Iraq fully supports General Assembly resolution 65/217 and reiterates the need for all States to refrain from unilateral coercive measures. Despite several resolutions on this issue, States still resort to the use of such arbitrary measures. Iraq condemns the use of arbitrary, extraterritorial, unilateral measures used to exert political pressure on other States. Such measures have a negative impact on human rights, including the basic right to food, health and development. Iraq stresses the importance of practical and preventive measures in the face of unilateral coercive measures.

Kuwait

[Original: Arabic]
[24 June 2011]

Human rights are enshrined in the Universal Declaration of Human Rights and several other international instruments and are also contained in the majority of national constitutions. They apply to relations between States and individuals and are also of importance to relations between States. All human rights must be upheld without exception or selection. Kuwait supports all efforts by the Office of the United Nations High Commissioner for Human Rights towards the rejection and elimination of unilateral coercive measures. Such measures are used to exert political pressure and pose obstacles to international relations and trade. Kuwait supports the implementation of General Assembly resolution 65/217 and extends its support and cooperation in this regard. It is important not to politicize the legal issues involved in its implementation. It is necessary to study the issue of human rights and unilateral coercive measures and to do a comprehensive and complete assessment of United Nations resolutions on this subject, including obstacles facing the achievement of the objectives of these resolutions.

Kuwait refuses to adopt any legislative, administrative or economic measures of a coercive nature or measures that obstruct the economic and cultural development of other States in order to force them to adopt certain policies. Unilateral coercive measures have negative effects on the populations of developing countries and development as laid out in the Declaration on the Right to Development. They impede the full enjoyment of all human rights, including the most elementary rights to food and medical care. Kuwait supports the decisions of

the General Assembly in relation to the Right to Development and rejects the imposition of unilateral coercive measures which impede this right.

Kuwait continues in its approach to international development assistance and support to more than 100 developing countries and least developed countries, for instance through the Kuwait Development Fund, and also through its work for sustainable development at the national level. Kuwait believes in the importance of development and its relationship to human rights and finds this to be an area to connect individuals and communities.

III. Analysis and conclusions

3. **With regard to General Assembly resolution 65/217, a total of 11 Member States submitted their views on human rights and unilateral coercive measures. Collectively, all States which responded were unequivocal in their objection to the use of unilateral coercive measures.**

4. **Respondent States rejected the use of unilateral coercive measures by any State, multilateral or international development agency. Such measures were viewed as violations of human rights and as obstacles to the full realization of human rights, development of societies, peace and security, and resolution of disputes and conflicts. Several States also stated that they do not resort to such measures as a matter of principle.**

5. **Most respondents referred to the principles of international law which include the obligation of States to refrain from adopting or applying unilateral measures that are contrary to the Charter of the United Nations and public international law. Such measures were said to contravene the ideals of democratic States and the basic principles of State sovereignty, independence, sovereign equality, self-determination and non-intervention in internal affairs. Unilateral coercive measures involve both private and public international law, including international humanitarian law, and therefore constitute a violation of several international as well as regional instruments. Relevant instruments cited by States include the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, and the Charter of Economic Rights and Duties of States (under which no State may use or encourage the use of economic, political or any other type of measure to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind).**

6. **States recalled that under the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, no person can be deprived of his/her own means of subsistence. Several States also reaffirmed their support for the implementation of the Declaration on the Right to Development. It was noted that the use of unilateral coercive measures with extraterritorial effects seriously affects trade and economic cooperation and has a negative impact on the free movement of capital and the freedom of trade, which in turn constitute obstacles to realization of the right to development of persons living in affected countries.**

7. Respondents referred to different forms of sanctions of an economic, commercial and financial nature. They include: trade embargoes; restrictions on finance and funding, property, intellectual property, visas and travel; and interference with exchanges of a scientific, cultural or touristic nature. Extraterritorial application of laws and interference with interests of businesses and citizens of third countries are also involved, especially in the areas of trade and investment.

8. States observed that unilateral legislative, economic and political unilateral coercive measures continue to prevail worldwide, with far-reaching negative implications for countries against which such measures are adopted, and more broadly, on human rights and development in developing countries. The main victims are said to be the people of the countries against which these measures apply, especially the most vulnerable — children, women, the elderly and persons with disabilities. Realities on the ground in affected countries included extreme hardships, denial of access to life-saving medication, especially paediatric medicines, basic food products, educational facilities and cultural amenities. The adoption of such coercive measures has a direct impact on the enjoyment of fundamental human rights.

9. Several States reaffirmed the indivisible, universal, interrelated and interdependent nature of all human rights and the close relationship of this recognition to the maintenance of peaceful relations between States. States reiterated their belief in the relationship between development and human rights, as well as peace. To preserve international peace and security, all States must promote them through friendly and cooperative relations based on the principle of equality between nations and their right to self-determination. In view of the current international context marked by divergence of State interests, and also by the development of multilateral frameworks and multilateralism for dialogue between States, challenges in international relations must be addressed within the multilateral setting. It was stated that the mechanisms established under the United Nations, including the Security Council, and other international and regional multilateral organizations are the only legitimate authorities to decide on appropriate measures to safeguard security and to encourage a State to comply with international standards.

10. By way of practical and preventive steps in the face of unilateral coercive measures, some States expressed the view that it is necessary to raise public awareness of the negative impact of unilateral coercive measures and the importance of respecting standards and principles of both public and private international law in order to create friendly relations between countries, and to promote and protect human rights. States cited national constitutional and legislative provisions, including those which upheld the values of peaceful coexistence among peoples and the duty of solidarity with all nations.

11. Some States have enacted legislation providing that any foreign law that limits or prevents free trade and free movement of capital, goods or people, directly or indirectly, adversely affecting any country or group of countries, will not be applicable and will not have any legal effect within their territories. States also gave examples of legal provisions stating that foreign laws intended to generate extraterritorial legal effects by imposing economic sanctions, or by

limiting investments in another country, with the objective of changing its government will not have any legal effect within their territories.

12. References were made to internal measures adopted to uphold human rights and advance social and economic development both within territories and beyond, also restating the belief that access to basic necessities should be open to all, and that access to food, health care and education should under no circumstances be used as political tools, whether within States or in the broader international community. States provided illustrative examples of policies and actions adopted to promote human rights and development, both for their own populations and by way of international assistance and cooperation, especially for the benefit of people in developing countries.

13. One State suggested the establishment of a Human Rights Council special procedure on unilateral coercive measures and their impact on human rights, and explicitly supported the request contained in Human Rights Council resolution 15/24 that the Office of the United Nations High Commissioner for Human Rights prepare a thematic study on human rights and unilateral coercive measures, including recommendations on actions aimed at ending such measures. Some States welcomed the continued attention of the General Assembly and the Human Rights Council to the issue of human rights and unilateral coercive measures.